



**IN THE COURT OF SENIOR CIVIL JUDGE AT ALAND,
KALABURAGI DISTRICT.**

:PRESENT:

SRI. S.M. ARUTAGI
B.com. LLB., (Spl)
SENIOR CIVIL JUDGE, ALAND.
O.S. No.30/2016

DATED THIS THE 02nd DAY OF MARCH 2023

Plaintiff: Suleman S/o Abdul Raheem Mugut,

V/s

Defendants: The State of Karnataka through,
The Deputy Commissioner,
Mini Vidhana Soudha & others,

PARTIES TO I.A.NO.IV

Applicant
Plaintiff: Suleman S/o Abdul Raheem Mugut,
Age: 54 Years, Occ: Agriculture,
R/o Opp: Old Govt, Hospital Building,
Court Road, Aland, Tq. Aland,
Dist. Kalaburagi.

(By Sri. A.W. Asgar, Advocate)



Vs.

Opponents/ 1. The State of Karnataka through
Defendants: The Deputy Commissioner,
Mini Vidhana Soudha,
Station Road, Kalaburagi.

2. The Sub Range Forest Officer,
Near Taluka Z.P., Office, Aland.

3. The Chief Officer, TMC Aland,
Near Court Building, Aland.

(D-1 & 2 by A.G.P.)

(D-3 by Sri M.V. Ekbote, Advocate)

**ORDER ON IA NO.IV FILED UNDER ORDER XXVI RULE
9 OF CPC, BY THE PLAINTIFF.**

This is an application filed by the plaintiff under order XXVI Rule 9 of CPC, to appoint the Court Commissioner for measurement and fixing the boundaries of the suit



schedule property bearing Sy.No.220/4 measuring 06 Acres 22 Guntas situated at Aland and submits his report by allowing the application in the interest of justice and equity.

2. In the affidavit, it is stated that he is absolute owner in possession and enjoyment of the suit schedule property bearing Sy.No.220/4 situated at Aland and purchased the same under the registered sale deed from his vendor and in pursuance of registered sale deed, his name was mutated in the RORs and the defendants have no way concerned to the suit property and they denied his title over the suit property and also tried to interfere his peaceful possession and enjoyment of the suit property and for that reason, he filed this suit for the relief of declaration and permanent injunction.



3. It is further averred that the defendant No.3 in his written statement, he taken contention that the suit property is not a agricultural land and it is not at all existing, the boundaries of the suit property mentioned by the plaintiff in plaint are not correct and therefore, when the boundaries mentioned in the plaint schedule is denied and also existence of the suit property is denied, then in order to know the said fact, the appointment of commissioner is very much necessary and it will help to this court also for proper disposal of the matter in hand. Otherwise, he will be put to great and irreparable loss. Hence, sought for allow the application.

4. On the other hand, the learned AGP has filed detailed objection to the application stating that the application is not maintainable in the eye of law. It is further contended that the plaintiff has filed the suit for the



relief of declaration of his ownership and injunction with respect to Sy.No.220/4 measuring 06 Acres 22 Guntas on the basis of the registered sale deed and it is the burden on the plaintiff to prove his case independently, but not on the contention taken by the defendants. Moreover, the plaintiff has to prove his case by producing cogent and relevant documents before this court. If the commissioner is appointed, it amounts to collection of evidence and even, the evidence of parties has not been completed. At this juncture, the application filed by the plaintiff is not maintainable and the plaintiff has not made out any sufficient grounds to allow his application. On these grounds prayed for dismissal of the application with costs.

5. Heard arguments on both side.

6. On the above pleadings, the following point that arise for my consideration



- 1) *Whether the plaintiff has made out sufficient grounds to appoint the court commissioner and to allow his application ?*
- 2) *What order ?*

7. My answer to the above points are as follows:

Point No.1 : In the Negative.

Point No.2 : As per order below for the following :

REASONS

8. **Point No.1**: It is pertinent to note that the plaintiff has filed this suit for the relief of declaration and permanent injunction against the defendants with respect to the suit schedule property. When the case was posted for further cross-examination of PW-1, the plaintiff come up with the present application to appoint court commissioner.



9. That it is admitted fact that the plaintiff has filed this suit for the relief of declaration of his title over the suit property and also consequential relief of permanent injunction against the defendants. When the defendants have denied the title and possession over the suit property, then it is the burden on the plaintiff to establish the same by producing cogent and relevant documents and oral evidence before this court and said burden cannot be shifted to the commissioner for collection of evidence by filing this application , because when the plaintiff has filed this suit for the relief of declaration, he has to prove his case by producing relevant documents before this court, which cannot be delegate to the commissioner. At this juncture, I would like to rely upon a decision passed **by Honorable Karnataka High Court in WP No.4646/2018**



in a case of Smt. Laxmamma V/s Siddaramu, wherein his lordship has held that,

The application is filed for appointment for court commissioner to demarcate the suit property in a suit filed for permanent injunction contending that they are the owners in possession of the suit properties. The defendant filed written statement denying the affidavit averments. In a suit for permanent injunction, it is on the plaintiff to prove that they are in lawful possession as on the date of suit by producing oral and documentary evidence. The plaintiff has produced gift deed, sale deed and sketch to prove the alleged interference by the defendant in a suit for injunction is filed after measurement made by concerned authority, question of appointment one more surveyor would not arise.

That the Trial Court considering the application and objection, rightly rejected and



recorded findings of the plaintiff and defendant for producing number of documents in support of their case. Hence, it is clear that the land was already measured and the plaintiffs have not made out any grounds to appointment of court commissioner to measure the property once again. The order passed by the Trial Court is in accordance with law. Hence, the petitioner has not made out any grounds to interfere the order passed by the Trial Court in so far as jurisdiction of court is concerned. Accordingly, WP dismissed.

10. Another decision passed by the Honorable **Madras High Court in a case of Selvamariammal V/s Kanagavel, in CRP (MD) (PD) No.1701/2017 dated 13.11.2018** wherein his lordship has held that,



In a suit for declaration and injunction, the defendants need not seek for the appointment of commissioner to disprove the case of the plaintiff. The Trial Court has considered all the facts and circumstances and also found that the plaintiffs are bound to prove their case based on pleadings, for which the defendants are not entitled to make out any application for appointment of commissioner. Hence, the Civil Revision Petition is dismissed.

11. In the instant case also, as I have already held that the defendants have denied the suit property is not agricultural land and also denied that the existence of suit property and its boundaries, then the plaintiff has to establish his case by producing the relevant documents and also by examining the independent witnesses about the existence of the suit property and its boundaries. The



plaintiff without making any efforts by production of relevant and cogent documents, he wants to shift his burden on the commissioner to prove his case and therefore, the appointment of commissioner amounts to collection of evidence and in view of the ratio laid down in the above said decisions, the application filed by the plaintiff is itself is not maintainable. Hence, the plaintiff has not made out any sufficient grounds to appoint the court commissioner and therefore, the ratio laid down in the above decisions are squarely applicable to the present case in hand. Accordingly, I answer **point No.1 in negative.**

12. **Point No.2:-** For the above said reasons, I proceed to pass the following;



ORDER

Interim Application No.IV filed
by the plaintiff under order U/O.,
XXVI Rule 9 of CPC, is hereby
rejected with costs.

(Dictated to the Stenographer, transcribed by
her, then corrected by me and pronounced in
open court on this the 2nd day of March, 2023)

(S.M. ARUTAGI)
Senior Civil Judge,
Aland.

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