

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC  
SEDAM**

**PRESENT: SRI. VIJAYKUMAR .S. JATLA**

**B.Sc., LL.B.**

**Senior Civil Judge & JMFC, Sedam**

**DATED THIS THE 31<sup>st</sup> DAY OF JANUARY-2023.**

**O.S.No. 29/2021**

**Plaintiff** : Parvatamma.

**// Versus //**

**Defendants** : Bhimappa & Others.

**Order on I.A.No-II Under Order 26 Rule 7 R/w Sec.151 of CPC  
filed by the plaintiff**

This is an interlocutory application filed by the plaintiff seeking the appointment of court commissioner and get report regarding the location and possession of the parties in the suit land Sy.No.12 of Naretlapad village, Tq: Sedam.

2. The advocate for plaintiff contended that the ancestors of the plaintiff and defendants have put in possession as per partition as under, i.e., in the total land Sy.No.12 totally measuring 15 acres 6 guntas is divided in two branches i.e., Dodda Bheemappa and Sana Bheemappa as half share each, i.e., 7 acres 23 guntas to the Dodda Bheemappa and 7 acres 23 guntas to Sanna Bheemappa accordingly both are put in possession of the lands, further son of

Dodda Bheemappa late Sayappa and his son Hanmappa and Narasappa i.e., husband of plaintiff and his family is enjoying 7 acres 23 guntas as absolute owners and possessors of the suit land. Likewise the remaining 7 acres 23 guntas allotted to Sanna Bheemappa and further his family members in which stem of Balappa took 3 acres 32 guntas and Tammappa was allotted 3 acres 31 guntas, likewise they were in possession of the property and enjoyment as the absolute owners of the property. Further Balappa was having two sons by name Narasappa and Chandrappa each were got divided 1 acre 36 guntas each and the defendant No.1 Bhimappa is the son of Narasappa who is enjoying the possession of the property to the extent of 1 acre 36 guntas and Chandrappa's son Hanmanthu died and his wife Narasamma is in possession to the extent of 1 acre 36 guntas of the property. And Further Tammappa's son Bheemshappa died and his son Venkataramulu is in possession of the land to the extent of 3 acres 31 guntas, likewise i.e., plaintiff is in possession of the property to the extent of 7 acres 23 guntas and defendant No.1 is in possession of 1 acre 36 guntas, defendant No.2 is in possession of 1 acre 36 guntas and defendant No.3 is in possession of the property to the extent of 3 acres 31 guntas. Though the parties are enjoying the suit lands since their partition as above but mutation of the land Sy.No.12 is not effected as per the

partition and enjoyment. When the plaintiff has filed for survey it is came to know that the record of rights are not correct and entries are not as per the possession and enjoyment. Hence, it is necessary to appoint the court commissioner and sought the report on location and possession of the parties over the suit land, it will aid and help in deciding the matter. Hence,sought for allowing IA No.2 as prayed for.

**3.** Advocate for the defendants has filed objection contended that the suit is for declaration, injunction and rectification of ROR in respect of suit land. PW.1 partly examined and posted for further chief examination at the request of plaintiff counsel. The burden of proof of declaration of title and possession of land as on the date of suit is on plaintiff U/s.101 to 104 of Evidence Act. For proving issues, the plaintiff cannot collect evidence through court by filing IA No.2 for appointment of commissioner to see the possession etc as sought for IA No.2. The reasons and grounds shown in IA No.2 are incorrect and IA No.2 itself is not maintainable in the eye of law. It is well settled principles of law that plaintiff has to prove title independently and whether he/she is entitled to relief on the basis of pleadings. So, IA No.2 is not at all tenable on any grounds. Hence, sought for rejection of IA No.2.

4. On the basis of the above pleadings and on hearing both side, the following points arise for my consideration are:

1) Whether the plaintiff has made out grounds to allow I.A. No.II Under Order 26 Rule 7 R/w Sec.151 of CPC?

2) What order?

5. My findings on the above points are as under:

Point No:1 : In the Negative.

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

### **REASONS**

6. **Point No.1:-** The case of the plaintiff and defendants is as discussed above. This application is filed by the plaintiff for appointment of court commissioner and get report regarding the location and possession of the parties in the suit land Sy.No.12 of Naretlapad village, Tq: Sedam when the matter is posted for plaintiff evidence.

7. Advocate for plaintiff contended that the appointment of commissioner is essential for identification of location and possession of parties in land Sy.No.12 of Naretlapad village, Tq: Sedam.

**8.** On perusal of the plaint documents on record, it is seen that the plaintiff filed suit for declaration and injunction against the defendants. When the matter is posted for further chief of PW.1 the present application is filed. The question of ownership and interference can be ascertained through full fledged trial. If the commissioner is appointed for local inspection of the property then it will amounts to the collection of evidence. It is burden on the plaintiff to prove the ownership and interference through oral and documentary evidence. The present application is premature one and not maintainable at this point of time. The evidence of both the sides is required for ascertaining the ownership and possession. Advocate for the plaintiff filed reported judgment in WP No.106659 of 2019 (GMCPD). The said authority is not applicable as the facts and circumstances of that case differs from instant case. If IA No.II is allowed then it will lead to multiplicity of proceedings. The plaintiff failed to make out the grounds to allow IA No.II as prayed for. In the light of above reasons **I answer Point No.1 in the Negative.**

**9. Point No.2:-** As I have answered point No. 1 in the Negative for the foregoing reasons, I proceed to pass the following:

**ORDER**

IA-II filed by the plaintiff Under Order 26

Rule 7 R/w Sec.151 of CPC is hereby rejected

with no cost.

(Dictated to the directly on computer and corrected, singed and then pronounced by me, in the open Court on this the **31<sup>st</sup> day of January-2023**, at Sedam)

**(Vijaykumar.S.Jatla)**  
Senior Civil Judge & JMFC,  
Sedam.