



**IN THE COURT OF CIVIL JUDGE & JMFC, AT
SEDAM**

Present
SRI. BALU,
B.A.,LL.B,
Civil Judge & JMFC,
Sedam.

O. S. No. 63/2024

THIS THE 05th DAY OF AUGUST-2025.

Plaintiffs:

1. Srinivas S/o Narasingrao Miskin,
Age:41 years, Occ:agriculture,
R/o Sedam, Tq: Sedam, Dist: Kalaburagi.

(By Sri. C.K.K.,Advocate)

//Vs//

Defendants:

1. Satish S/o Late Nagendrappa Pujari,
Age: 43 years, Occ: Agriculture,
R/o Habal (T), Tq: Sedam,
Dist: Kalaburagi.
2. Mahesh S/o Late Nagendrappa Pujari,
Age: 40 Years, Occ: Agriculture,
R/o Habal (T), Tq: Sedam, Dist: Kalaburagi.
3. Sarojamma W/o Late Nagendrappa,
Age: 65 Years, Occ: Agriculture,
R/o Habal (T), Tq: Sedam, Dist: Kalaburagi.

(D-1 to 3 By Sri. R.M. Advocate)



PARTIES TO I.A.NO.II

Applicant/
Original
Defendant:

Satish S/o Late Nagendrappa
Pujari

//V/s//

Opponent/
Original
Plaintiff:

Srinivas S/o Narasingrao Miskin

: ORDER ON I.A.No.II :

The counsel for defendants filed application under order XXVI Rule 9, R/w 151 of CPC to appoint Tahsildar (ADLR) Sedam as a court commissioner, to serve the suit land.

2. In the affidavit the defendant No.1 contended that, the plaintiff falsely stated that, he is in possession and cultivating the suit land, but the defendant denied the same that, the plaintiff never in possession of suit property any point of time and there is no any delivery of possession of the suit land by the deceased father of the defendant and defendants. Further it is contended that, the defendants are cultivating the suit property personally without any interference by the plaintiff, to ascertain the real fact, it is necessary to appoint Tahsildar (ADLR) Sedam as a



court commissioner for who is in possession and cultivating the suit property. If the present petition is allowed, no prejudice will be caused to the other side, if petition is not allowed, defendants will be put to irreparable loss and loose the valuable rights involved in the above case.

3. Per contra, the plaintiff filed objection to the present application by contending that, the present petition is not at all maintainable in the eye of law, the contents of affidavit of application are false, further it is stated that, father of defendant No.1 and 2 and husband of defendant no.3 i.e. Nagendrappa S/o Chandrappa Pujari sold their suit land to plaintiff under registered sale deed document No.3514/2014-15 dated 18.03.2015 and in that sale deed is clearly stated that possession of suit land is already delivered to plaintiff. The date of purchase of suit land plaintiff is its owner and is possession of suit land and he is cultivating the suit land personally by raising the crop and harvested the same every year and the present year he raised the Toor crop. Further it is stated that, defendants are in no way concerned to suit land either its ownership or possession and they never in possession of suit land either past or present. As per registered sale deed mentioned the name of plaintiff



vide mutation register No.MR-H12/2014-15 dated 17.07.2015 and the name of the plaintiff is occurred in ROR of suit land in column No.9 and 12 of owner and possession. Further it is stated that, the plaintiff has produced registered sale deed mutation and ROR of suit land, it is clearly established that, plaintiff is in possession of suit property. When question of again ascertaining who is in possession and cultivating the suit property does not arise. Further it is contended that, in mere injunction suit, to ascertain who is in possession of suit land commissioner can not be appointed. It is well settled principle of law that, in injunction suit commissioner can not be appointed to prove it's possession. Hence, prayed to reject the application.

4. Perused application and objection.

5. Heard on both side. The counsel for the plaintiff has filed memo along with citation.

6. The point arise for consideration is;

“Whether the defendant made out grounds to appoint the court commissioner for local inspection as sought in the application”?

7. My answer to the above point is in the **“Negative”**, for the following;

**REASONS**

8. This suit is filed by the plaintiff for the relief of permanent injunction. The defendants have filed their written statement. The plaintiff pleaded that father of defendant No.1 and 2 and husband of defendant no.3 i.e. Nagendrappa S/o Chandrappa Pujari sold their suit land to plaintiff under registered sale deed document No.3514/2014-15 dated 18.03.2015 and in that sale deed is clearly stated that possession of suit land is already delivered to plaintiff. The date of purchase of suit land plaintiff is its owner and is possession of suit land and he is cultivating the suit land personally by raising the crop and harvested the same every year and the present year he raised the Toor crop. Further it is stated that, defendants are in no way concerned to suit land either its ownership or possession and they never in possession of suit land either past or present. As per registered sale deed mentioned the name of plaintiff vide mutation register No.MR-H12/2014-15 dated 17.07.2015 and the name of the plaintiff is occurred in ROR of suit land in column No.9 and 12 of owner and possession. Further it is stated that, the plaintiff has produced registered sale deed mutation and ROR of suit land, it is clearly established that, plaintiff is in possession of suit



property. When question of again ascertaining who is in possession and cultivating the suit property does not arise. Further it is contended that, in mere injunction suit, to ascertain who is in possession of suit land commissioner can not be appointed. On the other hand the defendant contended that, the plaintiff is not in possession at any point of time.

9. The counsel for plaintiff relied upon the decision of Hon'ble High Court of Karnataka, in case of **SMT. GOWRAMMA V/S SMT. LAKASHMAMMA IN WP NO.10826/2018** wherein the Hon'ble High Court of Karnataka observed that, the appointment of court commissioner to determine the actual possession of the property is beyond the scope of the suit prayer for permanent injunction. Commissioner can not be delegated to ascertain the suit schedule property. Further it is observed that, in a suit for injunction the question as to who is in possession of the property is a matter to be decided by the court on the basis of the evidence either oral or documentary to be adduced by the parties. That function can not be delegated to a commissioner who can not find out as to who is in possession of property.

10. The principles laid down by the High Court



of Karnataka is aptly applicable to the present case on hand. Admittedly the suit prayer of this case is for permanent injunction against the defendants restraining them from interfering with the peaceful possession of the plaintiff. The matter is at initial stage even the trial has not been started. At this stage the commissioner can not be appointed. For the said purpose in my view the commissioner could not be appointed to find out as to who is in actual possession of the suit schedule property. It is for the parties before the court to prove their possession by producing cogent and documentary evidence. It is for the court to decide as to who is in possession based on the materials available before the court. The court can not delegate its function of giving a finding on possession to the commissioner. Hence I answer the above point in the **Negative**. For the above said reasons I proceed to pass the following;

ORDER

The application U/o. XXVI
Rule 9 of CPC filed by the defendant is
rejected.

(Dictated to the Stenographer directly on computer, computerized by her then signed and pronounced by me in the Open Court on this the 5th day of August, 2025).

Sd/-
(Balu)
Civil Judge, Sedam.