

:1:

KAKL200001622008



**IN THE COURT OF THE I ADDL., CIVIL JUDGE AND JMFC
AT BANGARPET**

PRESENT:

SMT. SUKEETA S. HADLI,

B.B.A.,LL.B.,(Hons)

I ADDL., CIVIL JUDGE & JMFC., BANGARPET.

O.S. NO.194/2008

DATED THIS 12TH DAY OF MARCH 2025

PLAINTIFF/S : Sri.H.S.Aswathnarayana Setty
& others.,

(Rep. by Sri.**N.S.**, Advocate)

-V/S-

DEFENDANT/S: Sri.H.S.Subbaraya Setty
& others.,

(D1 to 4 Rep. by Sri.**L.N.R.**,
Advocate)

PARTIES TO I.A.NO.XIX

Applicant/
Plaintiff: Sri.H.S.Aswathnaryana Setty
& others.,

-V/S-

Opponent/
Defendant: Sri.H.S.Subbaraya Setty
& others.,

ORDER

The plaintiff has filed this application U/o XXVI Rule 9 of CPC seeking appointment of Court Commissioner for the purpose of local inspection.

2. In the affidavit accompanying the application it is stated that, the plaintiff has filed the suit seeking the relief of permanent injunction. Originally, the suit was for declaration of title, but plaintiff has elected to limit relief to injunctive relief. The subject property, designated as item No. 3 in a registered Release Deed dated August 21, 1979, was acquired by the family of the plaintiff. While the deed specifies the property's boundaries, it regrettably omits specific survey or khata numbers, identifying it instead as the 'Rice Mill property.'

3. It is stated that, the defendants denied the very existence and identity of this property. Taking advantage of absence of survey numbers the defendants deny the presence of the Rice Mill. Despite the submission of corroborative records evidencing the Mill's operation, the defendants persist

:3:

in their denial. Notably, the defendants do not challenge the validity of the Release Deed or the conveyance of the property to my father; rather, they obstruct the matter disputing the precise identification of item No. 3. The disputed identity of the subject property necessitates the appointment of a court commissioner. This commissioner would carry out the commissioner work by conducting a precise measurement of the property, adhering to the boundaries specified in the Release Deed, and also in relation to survey number 292/3. Furthermore, the land's conversion to non-agricultural use, resulting in the subdivisions 292/3A, 3B, and 3C, is also contested by the defendants. To clarify these contentious issues, a commissioner's report, based on instructions provided by both parties, is indispensable. Absent a commissioner's report, no alternative means exists to substantiate the claims. On these grounds the plaintiff prays to allow the application.

4. The defendants have filed their objections. In their objections it is contended that, the plaintiffs initially filed this

suit claiming ownership of survey number 292/3, seeking both a declaration of title and a permanent injunction. Later on, they have restricted to relief of permanent injunction. However, during cross-examination, the PW1 explicitly admitted that survey number 292/3 is not mentioned in the registered Release Deed they rely upon. Subsequently, they substituted survey number 292/3 with alleged village panchayat khata numbers, while maintaining the same boundary descriptions.

5. When the defendants challenged the plaintiffs regarding the necessary court fees for these newly claimed village panchayat khata numbers, the plaintiffs abandoned their claim for declaration of title, restricting their suit solely to a permanent injunction. The plaintiff's own witness has conceded that the property described in their current suit schedule, which now references these village panchayat khata numbers (previously survey number 292/3), is not the property conveyed in the Release Deed. They cannot now contradict this admission. It is contended that this suit now for the relief of permanent injunction. The plaintiffs case must

be established based on the documents and evidence they have presented. The evidence from both parties has been fully presented, and the case is now scheduled for final arguments. At this advanced stage, the plaintiffs' request for a court commissioner is entirely inappropriate and should be dismissed. Established legal precedent dictates that a court commissioner cannot be appointed to gather evidence, especially in a suit limited to a bare injunction.

6. The defendants' documents and oral evidence demonstrate that the plaintiffs do not possess these alleged village panchayat khata numbers, and no electricity connection exists in their name at the property. The plaintiffs are attempting to disregard their own witness's admission made during cross-examination, which is legally impermissible. This application for a court commissioner appears to be a tactic to delay proceedings and avoid presenting arguments on the merits of the case. On these grounds the defendants pray to reject the application.

:6:

7. Perused the application, objection and material placed on record.

8. Head both the counsels on the application.

9. The following points arise for my consideration:-

1. Whether the appointment of Commissioner is necessary to conduct local investigation for the purpose of elucidating any matter in dispute between the parties ?

2. What order ?

10. My answers to the above points are hereunder:-

Point No.1 : In the **Affirmative.**

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

REASONS

11. Point No.1:- This court is dealing with the plaintiff's application for the appointment of a court commissioner to ascertain the existence and identity of item No. 3, described as the "Rice Mill property," as detailed in a registered Release Deed dated August 21, 1979. The said application came to be filed when the case was posted for

arguments on merits.

12. Upon perusal of the pleadings on record it appears that, the central issue is the discrepancy between the property description in the Release Deed lacking survey/khata numbers but containing boundary details, which is contested by the defendants.

13. The plaintiff's case hinges on the interpretation of the Release Deed and the physical identification of the "Rice Mill property" within the boundaries specified therein. The defendants no doubt deny the release deed but their denial of the property's existence necessitates a factual determination of its (item No.3) physical presence and its correlation with the Release Deed.

14. While it is true that a Court Commissioner should not be appointed to collect evidence in a suit, but it is equally true that it is not the nature of suit which is the guiding factor for allowing the application seeking appointment of Court Commissioner rather it is the facts and circumstance of each case. The purpose of a commissioner in this case is not

to create new evidence but to clarify existing factual disputes relating to the physical identification and boundary demarcation of the property more particularly item No.3 as described in the release deed.

15. Despite the defendants' objections, the Court finds that the appointment of a Court Commissioner is necessary to resolve the factual disputes and ensure a just decision. The commissioner's report will not only assist the court in determining the physical identity of Item No. 3 as described in the Release Deed but also in resolving the boundary disputes between the parties.

16. This Court acknowledges the admission by PW1 regarding survey number 292/3. However, this does not preclude the Court from investigating the physical existence and boundaries of the property as described in the Release Deed. As Order XXVI, Rule 9 of the Code of Civil Procedure, 1908, empowers the Court to issue a commission for local investigation where it deems a local investigation to be requisite or proper for the purpose of elucidating any matter

in dispute. The fact that evidence has been completed does not bar the court from appointing a commissioner if it deems it necessary for elucidating factual disputes. The commissioner's report will not create new evidence but will clarify existing factual discrepancies.

17. The commissioner's role would be to ascertain the existence of the Rice Mill, verify the boundaries described in the Release Deed, check the conversion of the land to non-agricultural use, assess the subdivision of the land, ascertain if any certificate of existence, or any other official document pertaining to the operation of a rice mill existed at the location and verify the existence of the power supply connection. The commissioner shall thus investigate and report on the physical existence of the "Rice Mill property" at the location as per the boundaries in the Release Deed. It is pertinent to note that, the appointment of a Court Commissioner is not meant to gather evidence to further the plaintiff's case but to assist the Court in resolving a critical issue of fact that neither party can independently resolve at this stage. In the light of

:10:

discussion made herein above the application filed by the plaintiff deserves to be allowed. ***Hence, I answer Point No.1 in the Affirmative.***

18. Point No.2:- In view of the discussion made above, I proceed to pass the following:-

ORDER

The I.A. No.19 U/O XXVI Rule 9 of CPC filed by the plaintiff is allowed.

The PDO is hereby appointed by the Court Commissioner.

The PDO shall carry out the commissioner with the assistance of Taluka Surveyor.

The Court Commissioner shall:

1. Measure the suit schedule property more particularly item No.3 property mentioned in the release deed i.e., Rice Mill.

2. Note down the existence and situation of aforesaid Rice Mill at the spot.

:11:

3. Prepare a rough sketch of the properties and indicate the existing boundaries.
4. Conduct the commission work only after due notice of the same to the parties.
5. Draw a Mahazar in respect of execution of Commission work.

The commissioner fee is tentatively fixed at Rs.2,000/- which shall be payable by the plaintiff.

The parties are directed to file memo of instructions (2 copies) on next date of hearing, if any.

For: Memo of instructions and
Commissioner fee.

*(Dictated to the **Stenographer**, typed by her on computer and corrected by me, then pronounced in the open Court on this day **12th March 2025.**)*

Sd/-
I Addl., Civil Judge and J.M.F.C.,
Bangarpet.