

KAKL400008932015



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,

AT MULBAGAL

: PRESENT :

Sri. HARISH G., M.B.A. LLB.,
Prl. Civil Judge & JMFC., Mulbagal.

DATED THIS THE 1st DAY OF SEPTEMBER, 2025.

O.S.No.158/2015

Plaintiff/s : Sri. K.V. Subramanyam,
S/o Venkatramachary,
Aged about 49 years,
Government employee,
R/a Keelaganai village,
Avani hobli,
Mulbagal taluk.

(Reptd., by Sri.**P.R.S.**, Advocate)

-Vs.-

Defendant/s : 1. K.R. Venkatramachary,
S/o Ramakrishnachary,
Aged about 55 years,
Agriculturist.

2. K.R. Anandachary,
S/o Ramakrishnachary,
Aged about 52 years,
Government employee,
R/a Near Bajanthri
Narayanappa layout,
Muthyalapete,
Mulbagal town.

3. Bharathi,
D/o K.R. Venkatramachary,
Aged about 20 years.

4. Smt. Savithramma,
W/o K.R. Venktramachary,
Aged about 40 years.

All are residing at;
Keelaganai village,
Avani hobli, Mulbagal taluk.

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

IN IA No.7

Applicant/defendant No.1 : Sri. K.R. Venkatramachary.

-Vs-

Opponent/plaintiff : Sri. K.V. Subramanyam,

- - -

ORDERS ON IA No.VII

The learned counsel for defendants filed IA No.VII U/o XXVI Rule 9 r/w Sec.151 of CPC., seeking to appoint ADLR as a

Court Commissioner to measure the suit schedule property and situation of pump house and bore-well.

2. **In accompanying affidavit sworn by the defendant No.1, it is stated that,** present suit filed by the plaintiff with respect to Sy.No.60 of measuring 2 acres of Sangandahalli village for the relief of permanent injunction. Said Sy.No.60 is Government gomala land. The plaintiff has contended that pump house and bore-well is situated within suit schedule property. In fact, said pump house and bore-well is situated within the government land which is in unauthorized possession of the defendants. The plaintiff by showing wrong boundaries has failed this suit by including the property in possession of the defendants. Hence, it is necessary to appoint Court Commissioner to conduct survey of suit schedule property and situation of pump house and bore well. Thus, prays to allow application.

3. The learned counsel for plaintiff filed objection contending that, instant application is not maintainable. The defendants have not properly stated whether pump house either belonging to them or to the plaintiff. The suit schedule property situated in the border of the Sangandlahalli village. Though property of the defendants is not situated within the border of the said village, the defendant No.1 has sworn to false affidavit.

The defendant though sold away his property in favour of D.K. Narayanaswamy in 1995 wrongly claiming property of the plaintiff by producing unrelated documents. The plaintiff is claiming relief in respect of suit schedule property. The parties having burden to prove their possession. The plaintiff is having no objection to ADLR for identification of existing possession of the parties. On all these grounds prays to dismiss the application.

4. Heard the arguments of learned counsel for either side and perused the materials on record.

5. The points for consideration are as under:-

1. **Whether the issuance of commission to make a local investigation is requisite for the purpose of elucidating the matter in dispute as prayed in I.A.No.VII?**

2. **What order?**

6. My answers to the above points are as under;

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

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

REASONS

7. **Point No.1:** Perused the entire case file. The plaintiff has filed this suit for the relief of permanent injunction

restraining the defendants from interfering and dispossessing him from the suit schedule property. Here in this case evidence of either parties is concluded and the defendants have come up with the instant application though at earlier stage have pressed the same when the case posted for further defendant evidence.

8. This court while deciding an interim application cannot go into merits of the case. However, it is specific contention of the plaintiff that, suit schedule property is situated within the boundaries shown in the plaint which is consisted of pump house and bore-well. Rather the defendants have contended that alleged pump house and bore-well is situated in their property bearing Sy.No.141/P34 and also denied existence of suit schedule property within the boundaries shown in the plaint. It is also contention of the defendant No.1 that, plaintiff is government servant and his family are in possession of 10 acres in Sy.No.60. The plaintiff by furnishing wrong boundaries is illegally claiming the property which is in possession of the defendants.

9. The plaintiff in his cross-examination clearly admitted that, he having no any objection to appoint Court Commissioner to conduct survey and inspect pump house bore-well. However, in this case, both plaintiff and defendants are contending that alleged pump house and bore-well are situated in their property.

Hence, core issue in the present case regarding situation of either properties and also in which property, pump house and bore well are situated. Answer of the plaintiff in his cross examination regarding survey conducted in respect of suit schedule property are in quandary. The real factual aspects of the location of suit schedule property as well as pump house and bore-well cannot be brought to the notice of the court by any amount of oral and documentary evidence lead by the parties. It is only the commissioner of the court who can find out the existing features of the spot by visiting the spot. Therefore, the appointment of commissioner is requisite to hold local inspection of the spot as prayed in the application.

10. Hon'ble High Court of Karnataka in **W.P. No. 20174 of 2022**, which delivered on 24.01.2023 has issued procedure to be followed by the all courts in case of application is filed for appointment of court commissioner. In said dictum, Hon'ble High Court of Karnataka has elaborately dealt with respect to stage at which application for appointment of court commissioner, nature of suit in which and at what circumstances, commissioner can be appointed and so on.

11. In this case, trial has been completed and having considered the contentions of both parties, it is only apprehension on each other regarding situation of pump house

and bore-well in their respective properties and no any clarity or documents as to situation of pump house and bore-well within the boundaries shown in the plaint. Hon'ble High Court in the above referred decision has made clear that, even in a suit for permanent injunction, commissioner can be appointed if the court deems fit that, the commissioner report is necessary to elucidate the matter in dispute and also held that, same cannot be amounts to collection of evidence.

12. Therefore, I am of the opinion that, the issuance of commission is necessary to ascertain the matter in dispute. The defendants in the instant application sought for appointment of ADLR., is necessary to measure suit schedule property and exact situation of alleged pump house and bore well through proper inspection along with his report. Thus, IA No.VII deserves to be allowed. Accordingly, **point No.1** is answered in the **Affirmative**.

13. **Point No.2** : In the light of the above discussion, the court proceeds to pass the following:-

ORDER

IA No.VII filed by the defendant No.1 U/o
XXVI Rule 9 r/w Sec.151 of CPC., is hereby
allowed.

Survey supervisor, ADLR office Mulbagal., is appointed as a Court Commissioner to make local inspection with respect to suit schedule property, situation of pump house and bore-well and submit detailed report with sketch.

The Commissioner fee is tentatively fixed at Rs.3,000/-.

Both parties are directed to submit their memo of instructions.

No order as to costs.

(Dictated to the Stenographer Grade-III directly on the computer, typed by him, then corrected and pronounced by me in the open court on this the **1st day of September, 2025**)

(Harish G.)
Prl. Civil Judge & JMFC.,
Mulbagal.

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