



**IN THE COURT OF THE CIVIL JUDGE & JMFC.,
AT NAGAMANGALA.**

Dated on this 25th day of March, 2022.

PRESENT:

Sri. MANJUNATHA R. B.A.L. LL.B.,
Civil Judge & JMFC.,
Nagamangala.

O.S. No.120/2015

PLAINTIFF : Sri. Chand Pasha.

V/s

DEFENDANTS : Sri. Mohammad Illiaz Pasha and others.

IA No-IX

APPLICANT/ : Sri. Chand Pasha.
Plaintiff

V/s

OPPONENTS/ : Sri. Mohammad Illiaz Pasha and others.
Defendants

* * *

ORDERS ON I.A. NO.IX

The plaintiff has filed an application under Order XXVI Rule 9 of CPC, praying to appoint Court commissioner with the help of the Taluk Surveyor to hold local inspection to note and report the points has sought in the application.

2. The reasons ventilated by the plaintiff in the affidavit annexed to the application are that, the plaintiff has filed the suit against the defendants for the relief of declaration and injunction. The first defendant try to put up construction encroached the suit property, by that time the plaintiff has filed an application seeking temporary injunction against him. The defendant no.1 orally admitted the existence of his and plaintiff property. Hence, it is just and necessary to appoint a Court commissioner and Taluk Surveyor and to visit the spot and prepare the sketch along with mahazar of properties. The appointment of commissioner is very much necessary hence, prayed to allow the application.

3. On the other hand, the defendant no.1 filed objection stating that, he has no objection to appoint the Court Commissioner to his land as well as suit schedule property. But, he has not orally admitted about existence of suit schedule property. The defendant No.3 and 4 have filed objection. In the objection they have contented that, in the application there is no specific contention regarding the appointment of Court Commissioner to measure the schedule property and also defendants properties. The defendant No.2 has already sold the property and the purchaser is necessary party to participate in the survey work. Hence, prays to dismiss the application.

4. Heard arguments. Perused the application.

5. After going through the application with affidavit and objection statement, points arise for my consideration are;

1. *Whether the plaintiff has made out sufficient grounds for appointment of court commissioner?*

2. *What order?*

6. My answer 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** : The instant suit is one filed for the relief of declaration to declare that, the plaintiff is absolute owner in possession of the suit schedule property and for possession of encroached 05 guntas of land in suit schedule property and mandatory injunction for removal of stone polls and barbed fence around 05 guntas in the suit schedule property. Through this application the plaintiff has sought to measure the plaintiff and defendants property i.e., Sy.No.474/1, measuring 05 guntas, Sy.No.474/2, measuring 10 guntas, Sy.No.474/3, measuring 05 guntas, Sy.No.474/4, measuring 10 guntas and to prepare a sketch with entire topography showing the situation of the properties of the plaintiff and defendants with the assistance of the Surveyor and to prepare a sketch.

8. Before dwelling upon the analysis of factual circumstance let me analyze some of the conceptual aspects with regard to appointment of commissioner.

9. The need to have resort to Order 26 Rule 9 of CPC ought to be considered by the court for the purpose of elucidating certain details, which in its opinion, can neither be added by the record nor can be produced by the parties by way of oral or documentary evidence.

10. The object of appointing commissioner is to note the factual circumstances in the spot which may not procured by any amount of oral and documentary evidence.

11. With this conceptual aspects in the backdrop let me analyze the factual matrix. The plaintiff has alleged that, after filing of the suit the first defendant by encroaching 05 guntas in the plaint schedule property installed stone polls and barbed fence. The factum of alleged encroachment has to be borne out by visiting the property and measuring the property. No amount of oral and documentary evidence would be enough to come to the conclusion of alleged encroachment. It is settled principles of law that, commission application has to be entertained only when the oral and documentary evidence are not enough to come to the right conclusion. Herein in the instant case on hand no amount of oral and documentary evidence would be enough to adjudicate upon the alleged encroachment made by the first

defendant herein. The first defendant himself submits no objection to allow the application. No prejudice will be caused to the other defendants if this application is allowed. On the other hand, if this application is rejected the plaintiff would be deprived with an opportunity to substantiate his contentions. In the touchstone of the reasons assigned above, I answer the above point in the **Affirmative**.

12. **Point No.2** : In view of my findings on Point No.1, I proceed to pass the following:

ORDER

Application filed by the plaintiff
under Order 26 Rule 9 of C.P.C. is
hereby allowed.

A Commissioner is appointed
with the assistance of competent
surveyor attached to the office of
Tahsildar and Commissioner Fee is
fixed at Rs.3,000/-.

To suggest the Commissioner
Name by 22.04.2022.

*[Dictated to the stenographer, transcribed and typed by her, corrected and then
pronounced by me in the open court on this day of 25th March, 2022]*

(Manjunatha R.)
Civil Judge & JMFC.,
Nagamangala.

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