

**IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC,
NAGAMANGALA**

Dated this 29th day of June 2024

Present: SRI. K.P. SIDDAPPAJI. B.A., L.L.B.,

Addl. Civil Judge and JMFC.,
Nagamangala.

Original Suit No.244/2016

Plaintiff : Kempamma

- V/s -

Defendant : P.D.O. Grama Panchayath,
Karadahalli.

RANK OF THE PARTIES ON I.A.No.III

**Applicant/
Plaintiff** : Ramesh GPA holder of plaintiff.

(By Sri. J.K.R., Advocate)

- V/s -

**Opponent/
Defendant** : P.D.O. Grama Panchayath,
Karadahalli.

(By Sri. P.C.M., Advocate)

ORDERS ON I.A. No.III

The learned counsel for Plaintiff has filed the application under Order XXVI Rule 9 of C.P.C. requesting this Court to appoint an advocate of Bar association, Nagamangala as court commissioner for measurement of the vacant space in between suit A schedule property and the road, along with the

assistance of AEE, PWD, Nagamangala and Taluk Surveyor, Office of Tasildar, Nagamangala and to submit the detailed report before this court.

2. The Plaintiff has sworn to an affidavit in support of the application, wherein she has stated that, The plaintiff has filed this suit for permanent injunction in respect of suit 'B' schedule property. The averments made in the plaint may be treated as part and parcel of this affidavit to avoid the repetition of the same. As stated therein, the plaintiff has purchased the land bearing Sy.No.17/2 to an extent of 0.03.08 guntas, situated at Karadahalli, Devalapura Hobli, Nagamangala Taluk, from its previous owner by name Balegowda and others through registered sale deed on 03.11.1992 for valuable consideration of Rs.3,000/- and she put in possession on that day itself. By virtue of the sale deed, the revenue documents mutated in the name of the plaintiff and she is in lawful possession and enjoyment of the aforesaid purchased property without any interruption ever since the date of its purchase. Subsequently, she has applied for conversion of aforesaid purchased property for her domestic purpose and she also obtained an order of conversion from the Assistant Commissioner of Pandavapura vide order No. A.L.N. 30/93-94, dated 03.02.1995. By virtue of the conversion order, the panchayath records mutated in the name of the plaintiff by the defendant's authority. Subsequently, the plaintiff has constructed the residential house and she is residing therein and herein after the same is called as suit 'A' schedule property.

3. It is further submitted that, Nagamangala – Doddayagati road is a main road of Kallinathapura and most of the villagers including plaintiff have to go that road from their houses for their daily needs. In between the suit 'A' schedule property and Nagamangala – Doddayagati road,, there is a vacant land situated towards North of the suit 'A' schedule property and the same is herein after called as suit 'B' schedule property. In order to reach the suit 'A'

schedule property, the plaintiff has to pass through suit 'B' schedule property. In fact, the plaintiff is passing his vehicles, bullock carts etc., through suit 'B' schedule property only and she has also used suit 'B' schedule property to pass and re-pass to her house to reach main road i.e., Nagamangala – Doddayagati road.

4. It is further submitted that, the defendant disputed the suit 'A' and 'B' schedule properties. To know the actual status of the actual measurement of the vacant space in between suit "A" schedule property and the road and also to decide the rival contentions of the parties and also for ascertaining and elucidating the facts in respect of the suit 'B' schedule property, it is necessary to appoint an Advocate as Court Commissioner to visit the suit 'A' and 'B' schedule property and measure the same and demarcating the same and to submit the report in detail. If, the commissioner is appointed, it will be helpful to the Hon'ble Court to resolve the controversy in respect of the suit 'A' and 'B' schedule property. As such, it is just and necessary to appoint an advocate of Nagamangala Bar Association to measure the property and to submit report

5. It is further submitted that if their application is not allowed, it will lead to multiplicity of litigation and also causes great hardship and results in great injustice and injury to her which cannot be compensated by any other means. On the other hand, no hardship or injury or injustice will result to the other side if their application is allowed. With these reasons she sought for allowing IA.No. III.

6. AGP has filed detailed objection to the present application.

7. Heard learned counsel for appearing for the parties and perused the materials available on record.

8. Now the following points arise for consideration of this court are as follows:

Point No.1: Whether the Plaintiff has made out grounds for allowing I.A.No.III ?

Point No.2: What order?

9. The findings of this court to the above said points are as under.

Point No.1: In the Negative.

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

:REASONS:

10. **Point No.1 :** The plaintiff has filed the present suit against Gramapanchayath PDO, Karadahalli Grama Panchayath seeking the relief of Permanent Injunction.

11. It is the case of the plaintiff that she is the absolute owner in possession and enjoyment of suit 'A' schedule property. Nagamangala-Doddayagati road is a main road of Kallinathapura. In between suit A schedule property and aforesaid road there is a vacant land ie., suit B schedule property is situated towards northern side of the suit A schedule property. Plaintiff is passing her vehicle, bullock carts etc. through suit B schedule property and she has also has used suit B schedule property to pass and repass to her house to reach Nagamangala-Doddayagati main road. The Defendant has no any manner of right, title, interest whatsoever much possession in or over the suit B schedule property, made plan to construct a building. If the defendant will construct a building in the suit B schedule property, it affect to rights of the Plaintiff to access to main road of Kallinatapura.

12. It is seen from the records that plaintiff has filed this instant application when the case was posted for cross of PW.1. It is contended in the application that defendant has disputed the A and B schedule properties. To know the actual status of the actual measurement of the also to decide the rival contentions of the parties and also for ascertaining and elucidating the facts in respect of the suit B schedule property, it is necessary to appoint an advocate as court commissioner to visit the same and to submit the report in detail. If, the commissioner is appointed, it will helpful to the this court to resolve the controversy in respect of the suit A and B schedule property. As such it is just and necessary to appoint court commissioner.

13. Per contra the AGP opposed the application contending that application filed by the plaintiff is not maintainable either in law or on facts and same is liable to be dismissed. It is contended that it is not disputed that suit A schedule property belongs to Plaintiff. But suit B schedule property belongs to government. Plaintiff has no any manner of right, title, interest whatsoever much possession in or over the suit B schedule property. Plaintiff is trying to collect evidence through court commissioner on behalf her.

14. Admittedly, plaintiff has filed this instant suit seeking the relief of Permanent Injunction against the PDO, Grama panchath Karadahalli. It is the duty of the plaintiff to prove her case by placing convincing oral as well as documentary evidence. It is relevant to state that the object of local investigation is not to collect evidence which is to be given and taken into Court. The plaintiff cannot ask the Court to appoint Court Commissioner to collect evidence on her behalf. Moreover, parties have not led their evidence yet.

15. At this stage it necessary to refer the decision of Hon'ble High Court of Karnataka in **Renuka V/s Thammanna and Others** reported in **ILR 2007 KAR 3029** wherein, the Hon'ble High Court of Karnataka has held as under;

7. It is settled position of law that Court Commissioner cannot be appointed to collect evidence in support of a claim. After completion of evidence on both the sides, if it is found that there is any ambiguity in the evidence adduced by the parties, then the Court may appoint a Commissioner for the purpose of clarification of such an ambiguity. In the instant case the evidence is not yet commenced and therefore the question of ambiguity in the evidence will not arise at this stage. The Trial Court without considering the settled position of law committed an error in passing the impugned order appointing a Court Commissioner. On this ground the impugned order is liable to be quashed.

Thus, it is evident from the above ration laid down by the Hon'ble High Court of Karnataka that, Court Commissioner cannot be appointed to collect evidence in support of a claim. After completion of evidence on the both the sides, if it is found that there is any ambiguity in the evidence adduced by the parties, then the Court may appoint a Commissioner for the purpose of clarification of such an ambiguity. In the instant case evidence of both parties is not completed. So Plaintiff has not made out grounds to the appointment of Court Commissioner. Hence, this court **answer Point No.1 in the Negative.**

16. **Point No.2:** For the aforesaid discussion on Point No.1, this Court proceeds to pass the following:

:ORDER:

**I.A.No.III filed by the learned counsel for Plaintiff
under Order XXVI Rule 9 of CPC is hereby rejected.**

(Dictated to the stenographer directly on computer, corrected and him pronounced by me in the open court on this **29th day of June 2024.**)

**(K.P. SIDAPPAJI)
ADDL. CIVIL JUDGE AND J.M.FC,
Nagamangala.**