

KAMS080007842009



**BEFORE THE MOTOR ACCIDENTS CLAIMS
TRIBUNAL AT MYSURU.**

**(IN THE COURT OF PRINCIPAL SMALL CAUSES
AND SENIOR CIVIL JUDGE, AT MYSURU)**

PRESENT

Smt. VEENA N

B.A. L. LL.B.,

Principal Judge, Court of Small Causes

Dated this the 7th day of March, 2024

O.S./248/2006

BETWEEN:

Smt. Sanamma, Dead by LRs

Plaintiffs

V/s

Mysuru District School, Teachers
House Building Co-operative Society & others

Defendants

-: Parties to IA:-

Smt. Sanamma, Dead by LRs

**Applicant /
Plaintiffs**

V/s

Mysuru District School, Teachers
House Building Co-operative Society & others

**Opponent /
Defendants**

ORDER ON IA's No.45 to 47

These I.A's No.45 to 47 are filed by plaintiff U/s 151 of CPC and U/O 18 Rule 17 of CPC and U/O 7 Rule 14(3) of CPC to reopen the case and to recall PW 1 for the purpose of leading further chief examination and to permit the plaintiff to produce the documents by condoning the delay.

2. It is stated in the affidavits annexed with these applications that recently the plaintiff came across the website of Karnataka Government by name 'Dishank' and on going through the same, it was found that plaint B schedule property is part of plaint A schedule property and since this came to the knowledge of the plaintiff a week ago, she could not produce these documents earlier and the satellite pictures along with boundary marks of the defendant No.1's layout clearly shows that B schedule property is part of A schedule property and layout of defendant do not extend beyond the road and hence the documents now sought to be produced are relevant to prove the case of plaintiff and to disprove the contention of defendants and hence sought to reopen the case and recall the PW.1. It is stated that if these applications are not allowed, the plaintiff will be subjected to irreparable loss and injury and on the other hand no hardship will be caused to the other side.

3. Opposing the said applications, the legal heirs of defendant No.7 and defendant No.4 and 6 have filed their objection statement. According to objection filed by the legal heirs of defendant No.7, evidence of both parties are already concluded long back , but on one or the other way, the plaintiff is trying to drag the proceedings and the matter went upto Hon'ble High Court of Karnataka and the application filed by the plaintiff seeking appointment of Court Commissioner is dismissed and when the matter is posted for arguments, the plaintiff by producing the satellite pictures taken from Dishank website has come up with these applications and these pictures are not admissible under the law

and are not relevant documents and the said website was released long back by the Government and hence the contention of the plaintiff that recently she came to know about the website is not tenable and sought for dismissal of applications.

4. Further the defendants No.4 and 6 have in their objection statement contended that the applications are highly belated and filed with a malafide intention to drag on the proceedings and since the evidence is concluded long back, the applications cannot be allowed. It is also contended that the applications filed by the plaintiff seeking appointment of court commissioner was rejected by this court and the same is confirmed by the Hon'ble High Court and hence the present applications seeking permission to produce the satellite pictures print out are not maintainable and documents are not admissible in evidence and thus contending these facts sought for dismissal of applications.

5. Heard both learned counsels and perused records.

6. Now the points that arise for consideration of this court is as hereunder :

1) Whether the plaintiff has made out sufficient cause so as to permit her to reopen the case and lead further evidence ?

2) What Order ?

6. My findings to the above points are as under:

Point No.1: In the Negative.

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

REASONS

7. **Point No.1:-** This suit is filed by the plaintiff seeking relief of declaration and consequential relief of mandatory injunction. The matter is pending since the year 2006. It is apparent from the records that the evidence of both parties are concluded and when the matter is set down for arguments, the plaintiff has come up with these applications. On going through the records, it is seen that the plaintiff had filed interim application U/O 26 Rule 9 and 10(a) of CPC seeking appointment of court commissioner for identification and demarcation of eastern boundary of plaint A schedule property and B schedule property. This court has rejected the said application. As against the order passed by this court, the plaintiff has filed WP No.19978/2019 (GM-CPC) before the Hon'ble High Court of Karnataka and as per the order dt 06.10.2023, the Hon'ble High Court has dismissed the writ petition on the ground that writ petition is devoid of merits and the order passed by this court is neither perverse nor contrary to the material available on record. So by this the order passed by this court pertaining to the appointment court commissioner has attained finality. When the matter stood thus, the plaintiff relying on the print out taken from Dishank website has raised a contention that said satellite pictures clearly shows the encroachment done by the defendants and as such it is necessary to produce these documents. But when the claim of the petitioner seeking appointment of court commissioner is rejected by the Hon'ble High Court by confirming the observation made by this court that the evidence placed on record is sufficient to decide the issue on merits, there arises no question of granting another opportunity for the plaintiff to lead evidence. Since the matter is pending from more than two decades, the plaintiff is directed to adhere to the undertaking given by him before the Hon'ble High Court. Hence the reasons assigned for reopening the case and permit the PW.1 to lead further evidence

relying on satellite pictures is not tenable. Accordingly this court proceeds to answer point No.1 in the Negative.

8. Point No.2:- As per my findings on point No.1, I proceed to pass the following:

ORDER

I.A.'s No.45 to 47 filed by plaintiff U/s
151 of CPC and U/O 18 Rule 17 of CPC and
U/O 7 Rule 14(3) of CPC are hereby rejected.

No order as to costs.

(Dictated to the Stenographer, computerized by her, corrected by me and then pronounced in the Open Court on 7th day of March, 2024).

**(VEENA. N.)
PRINCIPAL JUDGE,
Court of Small Causes
MYSURU.**