

KAMS400016242018



IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
AT K.R.NAGAR

PRESENT: **Sri. Aravindra B.C., B.A., L.L.B.,**
 Senior Civil Judge & JMFC,
 K.R. Nagar.

Dated this the 24th day of October, 2024

O.S. No.55/2018

Plaintiff : Sri. S.R.Sannappagowda

-Versus-

Defendant : Sri. C.S.Ravi

Parties to I.A.No.VIII

Applicant : Sri. S.R.Sannappagowda,
 S/o Late Rajegowda,
 Aged about 43 years,
 R/at: Sakshibeedu village,
 Akkihebbalu Hobli,
 K.R.Pete Taluk,
 Mandya District.

..... Plaintiff
(By Sri. A.S.V., Adv.)

-V/s-

Opponent : Sri. C.S.Ravi,
 S/o Late Siddegowda,
 Aged about 41 years,
 Lorry Owner,



R/at: #18, Ward No.3,
Bannimantapa Extension,
P.L.D. Bank Road,
K.R.Nagar Town,
Mysuru District.

..... Defendant
(By Sri. C.D.M., Adv.)

Provision under which the application is filed	U/o.26 Rule 10(A) of CPC.
Relief Sought For	Seeking permission to appoint the Court Commissioner to find out the proper location of sites.
The date on which the application is filed	30.10.2023
Number of the application	IA No.VIII
The date on which the objections are filed by the different opponents	06.12.2023
The date on which the orders were passed on the said application	24.10.2024

ORDER ON IA.No.VIII

The plaintiff has filed an application under order 26 Rule 10(a) of Code of Civil procedure prays for appoint the Engineer, Town Municipality Council, K.R.Nagar as court commissioner to find out the proper location of site No.16



and site No.128 situated at Bannimantapa area in K.R.Nagar Town.

2. In the affidavit the plaintiff has stated that, he has filed the suit against the defendant for the relief of declaration, possession and mandatory injunction with respect to the suit schedule property. The trial was completed and when the case was set down for arguments, at this stage the plaintiff has filed this present application. Further it is submitted that, the defendant has constructed the house on plaintiff's site No.128 by illegal and unlawful method. But, the defendant was the owner of the site No.16, he has constructed the building site No.128 instead of site No.16. Apart from this the defendant is trying to confusing this court by adducing the false evidence and trying to get the property of plaintiff. All the documents which are produced by the defendant are pertaining to site No.16. Hence, in order to clear the confusion and to find out the



actual physical existence of the site No.16 and 128, the appointment of court commissioner in this suit is proper and necessary to adjudicate the matter. If the application is not allowed, the plaintiff will be put to suffer irreparable loss and injury and put to great hardship. If the application is allowed, no hardship will be caused to other side. Hence, he prays for allow the application.

3. On the other hand, the defendant has filed objection to the application, in the objection statement he has denied the allegations made in the application filed by the plaintiff and he contended that, as on the date of suit the plaintiff was not known to exact and proper location of plaint schedule property as such the application is liable to dismissed. Further it is submitted by the defendant is that, it is the duty of the plaintiff to show the plaint schedule property location etc. The plaintiff has no manner of right over the site No.16 and the defendant is constructed the



building only site No.16 not the site No.128. Therefore, he prays for reject the application.

4. Heard arguments counsels for appearing of the parties. The following points arise for my consideration.

1. Whether the application filed by the plaintiff Under Order 26 Rule 10(a) of C.P.C is deserves to be allowed ?

2. What order?

5. After going through the records and hearing the parties the above points are answered as follows:

Point No.1 : In the Affirmative

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

REASONS

6. **Point No.1:-** The suit filed by the plaintiff initially for the relief of permanent injunction, later point of time he was amended the plaint and seeking relief of declaration,



possession and mandatory injunction with respect to the suit schedule property. According to plaintiff, he is the owner of the site No.128 assessment No.7415/128 measuring East to West 40 feet and North to South 30 feet situated near Bannimantapa extension, K.R.Nagar Town. He was purchased the schedule property under registered sale deed dated 16.02.2008. From the date of sale deed, he is in possession and enjoyment of the schedule property. The katha of the property stands in his name. Such being the case, the defendant who has no manner of right over the schedule property and he has taking possession of the property unlawfully and constructed building over the schedule property.

7. On the other hand, the defendant has appeared before this court and filed written statement and denied the case of the plaintiff and contended that, he is the owner of the property bearing Sy.No.16 measuring East to West 40



feet and North to South 30 feet situated at Bannimantapa extension, K.R.Nagar Town and he is constructed the building only site No.16. The plaintiff has no manner of right over the schedule property. On the basis of rival pleadings of the parties, the trial was completed and when the case was set down for arguments, the present application was filed for appointment of commissioner.

8. The plaintiff has contended that the defendant had Constructed the house in the site of plaintiff bearing site No.128. On the other hand, the defendant has denied the same. Further the record shows that the both parties have claiming same property. According to plaintiff, he having property in site No.128 and the defendant constructed the building in his site illegally. On the other hand, the defendant has contended that he was constructed the building in his site No.16. The oral evidence is available on record is not a substitute or sufficient to prove the encroachment. The object of local investigation is not



so much to collect to evidence. Which can be taken in court, but to obtain evidence which from its particular nature can only be had on the spot. Cases of encroachment is instances when a court should order a local investigation Under order 26 Rule 9 of CPC. In order to determine whether there has been an encroachment, it is always desirable to set the fields measured by an expert and find out the exact area encroached upon. Oral evidence cannot conclusively prove such an issue.

9. This Court has relied upon a decision reported in **2014(2) KCCR 1652** in the case of **BHIMAPPA RAYAPPA CHOUGALA v/s SHRIKANTH.**

“The suit is one for possession and injunction. The plaintiffs claim, the defendants have encroached upon their property. Only if the plaintiffs are able to show that the defendants have encroached upon their property, they would be entitled to the relief. Any amount of oral evidence is not a substitute or sufficient to prove the



encroachment. To cut short the litigation to reduce recording evidence, the trial Court in its wisdom, thought it fit to appoint a Commissioner even before the commencement of trial. That is how the duration of the litigation could be curtailed and speedy disposal of the civil matter could achieved.”

10. The said authority aptly applicable to the present case on hand under such circumstance this court feels that the appointment of Commissioner is much necessary for adjudicating the matter on issue. **Hence this court answered point No.1 is in the "Affirmative".**

11. **Point No.2:** For the above said reasons and discussion this court proceed to pass the following:

ORDER

I.A.No.VIII filed by the plaintiff under Order 26 Rule 10(a) of CPC is hereby allowed.



The Engineer, Town Municipal Council, K.R.Nagar is appointed as a Court Commissioner. The Commissioner fee fixed is Rs.3,000/-.

Both parties are directed to file memo instructions.

The Plaintiff is directed to deposit the commissioner fees as stated above.

*[Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the Open Court on this the **24th day of October, 2024**]*

**(ARAVINDRA B.C.)
SENIOR CIVIL JUDGE & JMFC,
K.R.NAGAR.**