

ORDER ON I.A.XI

The appellant has filed this application under Order 26 Rule 9 r/w Section 151 of C.P.C. to appoint the D.D.L.R. as court commissioner to do commissioner work. In the affidavit it is sworn that, the appointment of DDLR is necessary to do commissioner work and submit report as to know who is the person is in the possession of the suit schedule property. However, the commissioner was appointed in the Trial Court has given wrong report. Therefore, the appellant prays to allow the application.

2. Per contra the respondents filed wide objections mentioning that the application has to be dismissed. However, such large explanation to reject the appointment of court commissioner definitely not required. The reading of objection shows that already commissioner was appointed and he filed report. Therefore, the respondents prayed to reject the application.

3. Heard both sides. O.S.383/2012 was filed before the Trial Court for the relief of permanent injunction. The said suit was dismissed and defeated plaintiff filed appeal before this court by challenging the judgment. It is worth and cardinal to say that the burden is always upon the plaintiff to prove his possession over the suit schedule

property as on the date of filing of suit to get permanent injunction. He need not depend the evidence of other and plaintiff can take assistance of other evidence like commissioner's report only after discharge his burden means to say that he can seek appointment of court commissioner to collect the evidence through commissioner to know the real situation. Therefore, appointment of court commissioner in a suit for permanent injunction is not strictly prohibited. However as aforesaid it is the primary duty and burden of the plaintiff to discharge his burden on the basis of proper evidence, then he can press to appoint the court commissioner.

4. Secondly the case record shows that commissioner was already appointed and he submitted report to the Trial Court. Report of the commissioner is not according to the real situation, his report can be challenged by putting cross-questions and such report may be set aside. The appellant has not clarified that whether the commissioner's report submitted in the Trial Court has been set aside or stands intact. Therefore, it may be said that the applicant/appellant has not shown any proper reason to allow the application. Hence, I.A.XI sans merits and rejected.

Senior C.J. & JMFC.,
Nanjangud.

20.12.2024