

ORDER ON IA No.III

The applicant/plaintiff has filed this application under Order 26 Rule 9 of C.P.C., to appoint taluk surveyor as court commissioner to measure and fix the boundary of suit schedule property.

2. In the Annexed affidavit it is contended that, the suit is filed against the defendants for the relief of declaration, permanent injunction and also mandatory injunction with regard to suit schedule property. Even the 2nd defendant admitted the relationship and also plaintiff's ownership over the suit property, has disputed the boundary of suit property and also she submitted in her written statement that

boundary are marked. It is very much clear from the pleading in the written statement disputing the boundary of suit property. Hence it is very much essential to appoint the taluk surveyor as court commissioner for measure the suit property and fix the boundary there of. The appointment of commissioner is very much necessary to come to a conclusion and to settle the dispute. If the IA is rejected, he will be put to great hard ship and injustice and also it leads multiplicity of proceedings. On the other hand no injustice would be caused to the other side, if the application is rejected. Hence this application.

3. On the other hand, defendant submitted no objections.

4. Heard and perused.

5. In view of the above, the following points arises for consideration;

1. Whether applicant has made out the case for filing I.A No.III under Order 26 Rule 9 of C.P.C?

2. What order ?

6. This court answers the above points are as follows;

Point No.1:- In the Affirmative

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

-::REASONS:-

7. Point No.1:- This is the application filed by the applicant to survey the suit schedule property and fix the boundary. This is the suit filed by the plaintiff for the relief of declaration injunction against the defendant No.1 and 2 and mandatory injunction against the defendant No.3.

8. Further it is not the case of the plaintiff that the defendants have already encroached the schedule property or there is a boundary dispute. It is the case of the plaintiff that on the guise of wrong entry made in revenue records the defendant no.1 and 2 tried to interfere with the possession of the plaintiff's in the suit property stating that their father name was mentioned in the R.T.C. When such being the case the plaintiff has to prove is title and entries in the R.T.C are mentioned wrongly. To prove the same the plaintiff has filed this application. It amounts to collection of evidence. A local commissioner cannot be appointed solely to collect evidence because it is the duty of the parties to produce their own evidence. The Supreme Court and various High Courts have consistently held that

the purpose of a local commissioner is not to gather substantive evidence for one side, but rather to assist the court in a matter that requires local investigation, such as verifying local facts, inspecting property, or ascertaining boundary markers. Further, the court may appoint a commissioner for the purpose of clarification of ambiguity. In the application, the plaintiff did not explain the ambiguity. Accordingly, no grounds are made out to allow the application. **Hence, Point No.1 answered in the Negative.**

ORDER

The application filed by the plaintiff under Order 26 Rule 9 of C.P.C. is hereby rejected.

For arguments

Call on 23.07.2026

I ACJ & J.M.F.C., Nanjangud