

KAMS710001272012



**IN THE COURT OF CIVIL JUDGE AND JMFC,  
AT T.NARASIPURA, MYSURU**

**PRESENT**

**SRI. CHETHAN ANNADANI MANJUNATHA, B.A., LL.M.,  
Civil Judge & J.M.F.C.,  
T.Narasipura**

**DATED THIS THE 22<sup>nd</sup> DAY OF MAY 2023**

**O.S./25/2012**

**PLAINTIFFS** :: Narayani and others

[By : Sri.B.M.N., Advocate]

**V/s**

**DEFENDANTS** :: Smt. Nanjammani  
Dead by LRs No.1(a)  
Mahadevamma and others

[D1(a) to (c) By : Sri.S.J., Advocate  
D1(d) & (e) - Absent]

**PARTIES TO I.A.No.10**

**APPLICANT/  
DEFENDANT No.1(b)** :: Siddasetty

**V/s**

**OPPONENT/  
PLAINTIFF** :: Narayani and others

**: ORDERS ON I.A. No.10 :**

During the stage of further examination-in-chief of D.W.1, the defendant has filed IA.No.10 under Order 26 Rule 9 of C.P.C seeking to appoint Taluk Surveyor as Court Commissioner to measure the land belonging to Smt. Nanjammanni in Sy.No.62, measuring 1.24 acres.

2. In the affidavit accompanying the said application sworn in by the defendant No.1(b), it is submitted that, Nanjammanni had filed a suit in O.S.No.102/2015 seeking the relief of Permanent Injunction in respect of the suit schedule property which came to be decreed after contest. However, the defendants in the said suit have instigated the plaintiff herein to file the present suit to declare the decree passed in O.S.No.102/2005 as not binding upon them and for consequential relief of declaration and consequential relief of Permanent Injunction. It is submitted that, the plaintiffs have claimed that the property of Nanjammanni has been acquired for the purpose of formation of sites to distribute the same to the landless persons. Accordingly, the same has been distributed. As such, it is necessary to appoint the Taluk Surveyor as Court Commissioner to measure the property of Smt.Nanjammanni and report whether the suit schedule properties are formed in the property of Smt.Nanjammanni. Hence, prayed to allow the application.

3. On the other hand, the counsel for the plaintiff has filed a memo submitted that he has no objection to appoint Court Commissioner. But sought direction to the Court Commissioner to conduct the commissioner work as per the memo of instructions.

4. Heard both counsels on IA.No.10. I have perused the records of the case on hand, carefully and meticulously.

5. The points that arise for my consideration are as under:-

1. *Whether the defendant No.1(b) has made out sufficient grounds to allow the IA.No.10 ?*
2. *What order ?*

6. My findings on the above points are as follows:

**POINT No.1 : In the Affirmative**  
**POINT No.2 : AS PER FINAL ORDER**  
for the following ;

**:: REASONS ::**

7. **POINT NO.1:** It is the case of the defendant No.1(b) that his mother Smt. Nanjammanni is the absolute owner in possession and enjoyment of land bearing

Sy.No.62, measuring 1.24 acres in which the plaintiffs claimed that the same have been acquired for formation sites to the landless persons and the same has been distributed to them and they are the beneficiaries of the said sites which are the suit schedule properties in the present suit. Hence, prayed to appoint the Taluk Surveyor as Court Commissioner in order to ascertain whether the property of Smt. Nanjammanni in Sy.No.62 measuring 1.24 acres situated in Ranganathapura village has been acquired to form sites for landless persons and to confirm the existence of the suit schedule properties.

8. The perusal of the record reveals that the plaintiffs have filed this suit against the defendants for the relief of declaration, wherein the plaintiffs have sought to declare that the judgment and decree passed in O.S.No.102/2005 as not binding upon them and for consequential relief of Permanent Injunction restraining the defendants from interfering with their possession and enjoyment over the suit schedule properties. The said suit has been contested by the defendants by filing written statement, wherein it is contended that, at no point of time the property of Smt.Nanjammanni has been acquired for the purpose of formation of sites for the landless persons. It is also contended by the defendants that they filed an application before the Assistant Commissioner seeking details of the acquisition, if any, in respect of the land

allegedly acquired by them wherein the said officials has issued an endorsement dated 23.04.2005 and 18.02.2012 stating that the said land has not been acquired. The careful perusal of the records also reveals that though the plaintiffs have contended that the property of Smt.Nanjammanni has been acquired by the Government for formation of sites and the same has been distributed among the beneficiaries including the plaintiffs no such documents have been produced by the plaintiffs to substantiate and prove the alleged acquisition. It is the case of the defendants that, the land in Sy.No.62 measuring 1.24 acres has been granted to her by Land Tribunal vide order dated 02.06.1982 in proceedings LRF No.5738/75-76 and Form No.10 was granted to her in the year 1982-83 and the said facts has been observed by this court in O.S.No.102/2005. It is further relevant to note that, admittedly, the land in Sy.No.62 measuring 5 acres 17 guntas out of which the land to the extent of 4 acres 18 guntas is allegedly acquired for formation of sites to the landless persons and the same is evident as per Ex.P.13. The perusal of Ex.P.14 which is the final Gazette notification goes to show that the land to the extent of 4 acres 18 guntas is acquired by the Government from one Ramaswamy and Varadaraju who are shown as Anubhavaders of the said property. The said fact of acquisition is also evident from the final Gazette notification marked at Ex.P.15 which is dated 08.06.1979.

Since the dispute between the parties to this case pertains to the identification of suit schedule properties as to whether they are situated within the land in Sy.No.62 measuring 1.24 acres or not, I deem it appropriate to appoint a Court Commissioner to make local investigation, on the basis of the documents including the acquisition proceedings as to whether the suit schedule properties are situated within the boundaries as described in IA.No.10. Further the plaintiff has submitted no objection to the said application. Considering the peculiar circumstances under which the present application is filed and in order to elucidate as to whether the suit schedule properties are situated in the property in Sy.No.62 measuring 1.24 acres as described in schedule of I.A.No.10, I deem it appropriate to appoint the Court Commissioner to conduct local investigation. In view of the same, I have answered this point in the **Affirmative**.

9. **POINT NO.2:** For the aforesaid reasons, I proceed to pass the following;

**:: ORDER ::**

The IA.No.10 filed by the defendant No.1(b) under Order 26 Rule 9 of C.P.C is hereby allowed.

The Taluk Surveyor attached to the office of Tahasildar of T.Narasipura is hereby appointed as Court Commissioner to identify as to whether the suit schedule properties are situated within the boundaries in Sy.No.62, measuring 1.24 acres as described in IA.No.10 and report the same before this court.

The Court Commissioner fee is fixed at Rs.3000/-.

(Dictated to stenographer directly on computer and computerized by her, corrected, signed and then pronounced by me in the open Court on this the **22<sup>nd</sup> day of May, 2023**).

**(SRI.CHETHAN ANNADANI MANJUNATHA)**  
**CIVIL JUDGE & JMFC.,**  
**T.NARASIPURA.**

Call on for filing of memo of instructions from both the parties.