

ORDERS ON I.A.No.VI.

This is the I.A.No.VI filed by the applicant/plaintiff under Order XXVI, Rule 9 R/w Section 151 of C.P.C., seeking to appointment of a Court Commissioner.

2. In I.A.No.VI, it is stated for the reasons stated in the affidavit that, he has filed the above suit for the relief of declaration and mandatory injunction. Further stated that, the defendants have illegally constructed the building over the suit schedule property. Further stated that, the appointment of court commissioner is very much necessary in order to find out the actual encroachment by the defendants over the suit schedule property. Hence, prayed to appoint a Court Commissioner to ascertain the truth. If the above I.A. is allowed no hardship caused to the defendants, otherwise, the plaintiff will be put to inconvenience. Accordingly, prayed to allow the I.A.No.VI.

3. On the other hand, learned counsel for opponents/ defendant No.1 has filed objections to the above said application and stated that, the plaintiff has furnished the false boundary including he site property belongs to the defendants wherein they have under taken construction. The plaintiff has no right or possession in respect of the property of the defendants. The plaintiff has filed the above application in order to drag the proceedings. There is no documents produced by the plaintiff regarding the encroachment of the suit schedule property and there is no nexus between the parties. The plaintiff swearing a false affidavit. Hence, prayed to dismiss the application with exemplary costs.

4. Heard on both sides and perused the materials.

5. Now the only points that will arise for my consideration are:-

1. Whether the applicant/plaintiff has made out sufficient grounds to appoint a Court Commissioner as prayed in the I.A.No.VI filed by him under Order XXVI Rule 9 read with Section 151 of C.P.C.?

2. What Order?

6. My answers to the above points are:-

Point No.1 :- In the **Affirmative**.

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

:: R E A S O N S ::

7. **Point No.1:-** In this case, I have completely gone through the entire suit file. This is the suit filed by the plaintiff for the relief of declaration and mandatory injunction. In this case, after institution of the suit, the suit summons issued to the defendants. The defendant appeared through their counsel. The case has been posted for arguments, the applicant/plaintiff has come up with this I.A.No.VI seeking appointment of Court Commissioner pending disposal of the suit.

8. In the I.A.No.VI, it is stated that for the reasons stated in the affidavit, prayed to appoint a Court Commissioner to hold local inspection of the suit property. In the accompanying affidavit it is also stated that, the plaintiff sought the relief for declaration and mandatory injunction. In order to find out the encroachment in the suit schedule property, hence the present I.A. is to be necessary. Otherwise, the plaintiff

will be put to inconvenience. Accordingly, prayed to allow the I.A.No.VI.

9. I have also gone through the U/O.XXVI R. 9 R/w Section 151 of C.P.C. which reads as under:-

"9. Commissions to make local investigations.- In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules."

10. I have also gone through the rulings reported in:-

2001(2) K.C.C.R. Page 1283.

2002(2) K.C.C.R. Page 1424.

After going through the arguments on both sides on I.A.No.VI and I have gone through the above said rulings, wherein the Hon'ble High Court of Karnataka, the caption reads as under:-

"CODE OF CIVIL PROCEDURE, 1908-Order 26, Rule 9-Appointment of Commissioner-Trial Court allowed request and appointed surveyor as Commissioner to survey property-Discretionary

order-Appointment of Commission justified-
Revision Petition dismissed."

"CODE OF CIVIL PROCEDURE, 1908-Order 26, Rule 9-Appointment of a Commissioner-Court cannot prevent a party from adducing the best evidence, if such evidence can be gathered with the help of a Commissioner-However, when a party himself had stated in his Pleading the extent of the land that had been encroached upon by the other party, there is no need to have a Commissioner appointed for measurement, demarcation and filing a report thereon."

11. After careful scrutiny of the contents of I.A.No.VI and also after hearing on both sides on I.A.No.VI, I am of the opinion that, since the suit is for relief of declaration and mandatory injunction, if the Court Commissioner is appointed to hold local inspection of the suit property, no hardship will be caused to the opponents/defendants.

12. Therefore, in this case it is pertinent to note that, the plaintiff filed this suit for the relief of declaration and mandatory injunction and the evidence has been already completed. If this I.A. is allowed, the controversy involved in the suit is properly adjudicated and it avoids multiplicity of proceedings. Therefore, if the Court Commissioner is appointed to measure the suit schedule property and find out the alleged encroachment, no hardship will be caused to the opponents/defendants. Moreover, there is no question of collection of evidence. Therefore, the applicant/plaintiff has made out sufficient grounds to allow the I.A.No.VI. Accordingly, Point No.1 is answered in the 'Affirmative'.

13. **Point No.2:-** In the light of the above discussion, I proceed to pass the following:-

:: O R D E R ::

I.A.No.VI filed by the applicant/plaintiff under Order XXVI, Rule 9 R/w Section 151 of C.P.C., is hereby **allowed**.

The Taluk Surveyor is appointed as Court Commissioner.

The Court Commissioner fee is tentatively fixed Rs.2,000/-.

The applicant/plaintiff is hereby directed to deposit Court Commissioner fee of Rs.2,000/-.

The Taluk Surveyor is hereby directed to measured the suit schedule property and also find out the alleged encroachment as contended by the plaintiff.

Both the plaintiff and defendants are hereby directed to file their respective memo of instructions in the next date of hearing without fail.

Call on: 29.11.2022

**Addl. Civil Judge & J.M.F.C.,
T.Narasipura.**