

ORDERS ON I.A.NO.XIV.

At the stage of defendant evidence this I.A.No.XIV filed by the applicants/plaintiffs under Order XXVI, Rule 9 read with Section 151 of C.P.C., seeking appointment of Junior Engineer as Court Commissioner.

2. In I.A.No.XIV, it is stated that for the reasons mentioned in the affidavit, prayed to appoint a Junior Engineer as Court Commissioner to conduct the measurement of the suit schedule properties and to erect boundary stone to the suit schedule properties. In the accompanying affidavit, it is also stated that, the plaintiffs have filed the present suit for the relief of permanent injunction. Further stated that, the defendants in their written statement have disputing the identity and boundary line of the suit schedule properties. Hence, in order to short cut the litigation the present I.A. is to be necessary. Otherwise, the plaintiffs will be put to inconvenience. Accordingly, prayed to allow the I.A.No.XIV.

3. On the other hand, the learned counsel for the defendants has filed objection to I.A.No.XIV and contended that, now the case is set out for evidence of defendants and at this stage the plaintiffs have come with this application to drag on the proceedings. Further contended that, the plaintiffs have filed the present suit for the relief of permanent injunction and hence, the plaintiffs have to

prove the lawful possession and interference in respect of suit schedule properties. Hence, in a bare injunction suit the question of appointment of commissioner does not arise because of the fact it amounts to collection of evidence, which is not permissible under law. Therefore, the present application is not maintainable. Accordingly, prayed to reject the I.A.No.XIV with exemplary cost.

4. Heard on both sides and perused the materials.

5. The following points arise for my consideration:-

1. Whether the applicant/plaintiffs No.2 has made out sufficient grounds to appoint a Court Commissioner as prayed in the I.A.No.XIV under Order XXVI Rule 9 read with Section 151 of C.P.C.?

2. What Order?

6. My answers to the above points are as under:-

Point No.1: In the **Negative**.

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

:: R E A S O N S ::

7. **Point No.1:-** The suit is filed for the relief of permanent injunction. Now the case is posted for defendant evidence. At this stage the plaintiffs have filed the above application for seeking appointment of Court Commissioner to conduct the measurement of the suit schedule properties

and to erect boundary stone to the suit schedule properties. On the other hand, the defendants have strongly objected to the above application stating that, in a suit for permanent injunction appointment of Court Commissioner to conduct the measurement of the suit schedule properties and to erect boundary stone to the suit schedule properties is not permissible under law. The plaintiffs have filed the above application to fill up the lacuna of the case. It is the well settled position of law that in a suit for permanent injunction, the parties are not entitled to seek the appointment of Commissioner at their vim's and fancies. But, the plaintiffs are seeking to appointment of Commissioner to canvass and gather evidence much against the recitals and documents in their documents, since the same is not permissible under law. Therefore, the applicant has not made out any valid ground to seek the appointment of Commissioner.

8. After going through the contents of affidavit of I.A.No.XIV and also objections and also after hearing the arguments of both sides on I.A.No.XIV, I have gone through the provision of Order 26, Rule 9 of C.P.C., which reads as under:-

"Order 26 Rules 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."

9. From a bare perusal of Order 26 Rule 9 of the Code of Civil Procedure, it is clear that which the Court deems a local investigation to be requisite 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 the damages or annual net profits the Court may issue a Commission. From the above provision it is clear that the collection of evidence is not permissible under law.

10. It is now well settled principles of Law by various decisions of the Hon'ble Supreme Court of India as well as Hon'ble High Courts that, no Taluk Survey or Commissioner can be appointed to gather the evidence, as it is legally unsustainable. The suit is being for permanent injunction, a Court Commissioner cannot be appointed to conduct the measurement of the suit schedule properties and to erect boundary stone to the suit schedule properties. Admittedly, the plaintiffs have come out with the suit for permanent

injunction against the defendants in respect of the suit schedule properties. Further, the court will decide the suit for the relief of permanent injunction on the basis of documents. In the said circumstances there is no need for appointment of Court Commissioner that too for find out the alleged measurement, identity and boundaries of the suit schedule properties.

11. On careful scrutiny of the above said provisions of law it is crystal clear that, the collection of evidence is not permissible under law. Therefore, in the instant case, the suit filed by the plaintiffs for the relief of permanent injunction. It is also the burden of the plaintiffs to prove their case. Therefore, they have to produce the documents with regard to prove their case. The plaintiffs being dominus litus as per the Indian Evidence Act, it is bound to prove their case. Therefore, in a suit for permanent injunction no appointment of Commissioner is necessary. It is the settled position of law that in a permanent injunction suit the parties are not entitled to seek the appointment of Commissioner at their vims and fancies. But, the plaintiffs are seeking to appointment of Commissioner for conduct the measurement of the suit schedule properties and to erect boundary stone to the suit schedule properties, since the same is not permissible under law. In a suit for permanent injunction the necessity for appointment of Commissioner that to for noting down the physical features of the suit

schedule properties does not arise and such exercise is not going to help the plaintiffs in any manner in deciding the suit for permanent injunction. The said reasoning of the plaintiffs seeking for appointment of Commissioner is wholly unjustifiable, more so in a suit for permanent injunction. What is to be seen, mainly in a suit for permanent injunction is as to whether the plaintiffs are in possession and enjoyment of the suit schedule properties as on the date of filing of the suit. Therefore, taking out an application for appointment of Commissioner at the stage of defendant evidence is nothing but an unnecessary exercise to collect the evidence through Court. It is well settled dictum of the Apex Court that no Commissioner is appointed for collecting evidence. It is the duty of the plaintiffs to prove their case by letting oral and documentary evidence. Moreover, the party cannot collect the evidence through court Commissioner. In these circumstances, the applicants/plaintiffs have not made out any reasonable grounds to allow the application. Hence, this Court has no other option except rejecting the I.A.No.XIV. Accordingly, Point No.1 is answered in the **Negative**.

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

:: O R D E R ::

I.A.No.XIV filed by the applicants/plaintiffs under Order 26, Rule 9 of C.P.C., is hereby **rejected.**

For defendant evidence.

Call on:17.06.2025.

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