

06.07.2024

For Orders

**ORDER ON I.A.No.I FILED UNDER ORDER 26 RULE
9 OF C.P.C**

The DHR/applicant has filed I.A.No.I under section 26 Rule 9 of C.P.C. to direct the bailiff to demolish the encroached suit house property in question measuring to an extent of 02 guntas and seeking to appoint the Taluk Surveyor as a Court Commissioner for measurement of the suit house property in question and to demarcated the boundaries and correct extent of the property as per the claim made by the DHr for enforcing the decree of this matter.

2. On going through the material available on record, it is seen that, the plaintiff/DHR has filed suit in O.S.No.113/2016 and the said suit was decreed dated 31.05.2017 and directed the defendants to demolish the encroached illegal construction of Mangalore title house of the suit schedule property measuring to an extent of 02 guntas and to deliver such encroached portion of the suit schedule property measuring to an extent of 02 guntas to the plaintiff and thereafter being aggrieved by the above judgment and decree, the defendants have not filed any stay order from the Appellate court. The decree has been passed way back in the year 2017. The

defendants/JDRs have not obeyed the order of the decree and causing alleged interference.

3. The counsel for DHR complains that in view of the judgment and decree dated 31.05.2017 in O.S.No.113/2016 the defendant/JDR has not delivered the possession of the suit property in question and to enforce the said judgement and decree required sketch, Hadubasth and demarcation of the boundaries of the suit property, as such prays to appoint the Taluk Surveyor as a Court Commissioner for measurement of the suit house property in question and to demarcated the boundaries and correct extent of the property as per the claim made by the DHr for enforcing the decree of this matter and to direct the direct the concerned police station to give the necessary aid in the enforcing of the said judgment & decree dated 31.05.2017 in O.S.No.113/2016. In that view of the matter, the appointment of the commissioner for measurement of the suit property and to demarcated the boundaries and correct extent of the properties as per aforesaid judgment and decree would be justified and the Court can grant police aid exercising its inherent powers. Otherwise the interest of the litigation cannot be protected against a party who violates the Court order. As such it is necessary to provide police aid to enforce the said judgment & decree. From the foregoing

discussion and reasons stated therein, I proceed to pass the following:

ORDER

Interim Application No.I filed by the DHR/applicant under section 26 Rule 9 of C.P.C is hereby allowed.

Send the decree in O.S.No.113/2016 dated 31.05.2014 to the Taluk Surveyor, T.Narasipura Taluk, for measurement of the suit house property in question and to demarcated the boundaries and correct extent of the property as per the claim made by the DHr for enforcing the decree of this matter.

Further, the Taluk Surveyor, T.Narasipura Taluk is hereby directed to prepare sketch, Hadubasthu and to measure the suit house property in question and to demarcated the boundaries and correct extent of the property as per the

claim made by the DHr for enforcing the decree of this matter and shall submit report along with mahazar to this Court.

Court Commissioner fee tentatively fixed at Rs.3,000/- [Rupees Three thousand only] and petitioner has to bear the cost of commissioner.

In view of the Judgment and decree dated 31.05.2017 in O.S.No.113/2016, for enforcing the aforesaid decree, the Court Bailiff is directed to deliver the suit property in question with the assistance of SHO of Bannur P.S.

The SHO of Bannur P.S. is directed to give necessary aid in the enforcing of the judgment and decree dated 31.05.2017 in O.S.No.113/2016 of this matter.

Accordingly office to issue intimation and issue execution

warrant and Delivery Warrant
and Commissioner Warrant.

Await commissioner report.

Call on: 29.08.2024.

**CIVIL JUDGE & JMFC.,
T.NARASIPURA.**

