

ORDERS ON IA NO.7

The present application is filed by the plaintiff under order **26** rule **9** R/w **151** of CPC for appointment of court commissioner⁹⁶ for survey of suit property.

02. In support of the application, it is stated in the affidavit that the suit property was purchased by the brother of the plaintiffs and the proper survey number is mentioned in the sale deed. However, single boundaries are mentioned to both the survey numbers and it is necessary for clarification in regard to boundaries of the suit property and another property in Sy.No.290. The said original sale deed is produced before the court. IN the said sale deed two properties were purchased, suit property and another property in Sy.No.290. The plaintiffs are in possession of the suit property. If the present application is allowed, then the defendant would not be caused with any hardship and it would aid and assist the court in

better adjudication of the case. Thereby prayed to allow the present application.

03. The said application is resisted by the defendant by filing objections to the same. In the objections, it is stated that there is proper survey number shown in the sale deed for the property measuring 2.38 acres. In view of the same, there is no need for survey of the suit property. If the survey is conducted, then it would lead to collection of evidence. All the averments mentioned in the affidavit are false and denied. It is also contended that the surveyor has no jurisdiction nor the power for the purpose of survey of the suit property and thereby prayed for rejection of the present application.

04. Based on the same the point that arises for consideration is that:

- 01. Whether the plaintiffs have made out grounds for appointment of the Court Commissioner for survey of the suit property as prayed in I.A.No.7 ?*
- 02. What order?*

- 05.** Heard both sides.
- 06.** Meticulously perused the records.
- 07.** The above Points are answered as follows;

Point No.1 : In the Affirmative

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

:: REASONS ::

08. On Point No.1:- At the out set, the present suit is for the relief of Declaration and Mandatory injunction. Both parties have led their evidence. Presently the matter is set down for arguments. The plaintiffs derive their rights to the suit property by virtue of sale deed at Ex.P.3. On perusal of the said sale deed it is found that the same is executed for the property in Sy.No.290 and 291. The suit property is Sy.No.291 measuring 2.38 acres is the suit property. However, for the both the survey numbers there is single boundaries. The defendant has denied the right of the plaintiffs over the suit property on the ground that the mother of the defendant had no right

to execute the sale deed. It is also stated in the written statement that the suit property is not in existence and the question of the possession does not arise. In view of the same, it is necessary for the identification of the suit property with the proper boundaries as per field measurement book (FMB), available in the office of Survey Department. The plaintiff has not sought any relief of possession and even both the parties have led their evidence and the stage of evidence is conclude^{96d}. If the court commissioner is appointed, then it would not amount to collection of evidence, as there is no relief sought in regard to possession or any kind of permanent injunction. Identification of the boundaries is necessary facet in the suit for declaration of title. As the present suit is the comprehensive suit for declaration of title and in view of the same, it is necessary for proper identification of boundaries. Both the parties have already led their evidence and there is nothing left from the side of the parties to state that there would be collection of evidence.

Even there is no dispute in regard to the boundaries. In view of the same, the plaintiffs have made out grounds for appoint of the court commissioner for identification of the boundaries of the suit property by making local inspection and also the extent of the suit property. As a result proceed to pass the following:

:: ORDER ::

- *I.A.7 filed by the plaintiff for appointment of court commissioner is allowed.*
- *ADLR-Hadagali is appointed as Court Commissioner for the purpose of identification of the boundaries of the suit property and to measure its extent. Also state any other essential features found during the time of Inspection.*
- *The Court Commissioner shall conduct spot inspection and to measure the suit property by clearing the showing the boundaries to the suit property on 31.08.2023 at 11.00 a.m.*
- *Both parties are also at liberty to submit necessary memo of instruction to the Court*

commissioner at the time of conducting the survey.

- *The date for carrying-out of the local inspection by the Court Commissioner is fixed on 31.08.2023. Both the parties are directed to be on the spot (suit property) on 31.08.2023 at 11.00 a.m.*
- *In view of the fixing of the date for local inspection, the notice to the parties by the Court Commissioner is hereby dispensed with.*
- *The Court Commissioner shall take the photographs while conducting the commission work.*
- *The court commissioner fee is fixed at Rs.2,500/-.*
- *Issue commission warrant along with copy of the plaint and true copy of the present order.*
- *Await Commissioner Report by 16.09.2023.*

Date: 31-07-2023.

(VEERESH KUMAR C.K)
Civil Judge and JMFC.,
Hadagali.

