

22.03.2025

Plt: BKP

Def: KVV

For orders

**Orders on I.A.No.8 under Order XXVI Rule 9 read with
Section 151 of CPC**

This application is filed by the PW.1 Smt. Kalyanamma requesting the court to appoint a commissioner to examine her for the reasons stated in the affidavit.

2. In the affidavit filed accompanying this application, PW1 Smt.Kalyanamma states that she has filed a suit for partition and separate possession and she has adduced her chief evidence and the case is posted for her cross-examination by the defendant side. Now she is suffering from heart disease and asthma and also suffering from leg pain and she is not in a position to move and she is taking treatment at the hospital. As such, she is unable to appear in person before the court for her examination. Therefore, she prays to allow this application.

3. On the other hand the Defendants counsel files objection to this application contending that application is not maintainable either in law or on facts. It is further contended that the PW.1 has not produce any document to show that she is suffering from heart disease and other diseases as stated in the effort of it. It is further stated that as the PW.1 has not produced any supportive document. Hence, he prays for dismissal of application.

4. Heard the counsel for the Plaintiff and Defendants and perused the materials on record.

5. The following points arise for my consideration:-

(1) Whether PW.1 has made out sufficient ground for her examination through Court Commissioner?

(2) What order?

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

Point No.1 : In the Affirmative;

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

REASONS

7. **Point No.1:-** Undisputedly present suit is filed by the plaintiff against defendants for the relief of partition and separate possession. It is not in dispute that the PW.1 has adduced chief evidence and cross-examination of PW.1 has been commenced and a PW.1 is partly cross-examined. When the case was at the stage of further cross-examination of PW1, PW1 come up with the present application requesting the court to examine her through the court commissioner for the reason that she is suffering from heart disease and other diseases and she is unable to appear before the court in personally.

8. In support of her contention PW.1 has produced Lab Reports, Medical documents, x-ray and ECG reports. From perusal of these documents it reveals that PW.1 is suffering

from illness since 2023 and she is under treatment. These documents have not been disputed by the learned course for the defendants during the course of argument. The contention of the defendants counsel that PW.1 has not produced any document in support of her contention taken in the affidavit filed accompanying this application it cannot be accepted for the reason that PW.1 has produced in all six documents which are medical records.

9. I have perused order 26 rule 4(A) of CPC which provides that notwithstanding anything contained in these rules any court may in the interest of justice or for the expedience disposal of the case or for any other reason issue commission in any suit for examination on interrogatories or otherwise of any person resident within the limits of its jurisdiction and the evidence so recorded shall be read in evidence. Considering the fact that PW.1 is suffering from heart disease and other diseases and she is unable to appear in person before the court and for the reason that this suit is of the year 2013, in order to expedient disposal of the case, a commission has to be appointed for examination of PW.1. Otherwise, it causes injustice to the Plaintiff. If commissioner is appointed for cross-examination of PW1, no injustice would be caused to the other side. For the foregoing reason, I come to conclusion that PW.1 has made out sufficient ground for appointment of commissioner for recording the further cross-examination of PW.1. Hence, I answer point No.1 in Affirmative.

10. Point No.2:- For the reasons discussed above, I proceed to pass the following:

ORDER

I.A.No.8 filed by the PW.1 under order 26 rule 4A of CPC is hereby allowed on cost of Rs.500/-.

Commissioner is to be appointed for examination of PW.1.

To suggest the name of the commissioner by PW.1.

R/by:17.04.2025.

**PRL. SENIOR CIVIL JUDGE & C.J.M.,
RAMANAGARA.**