



IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC.,
AT CHANNAPATNA.

PRESENT: SRI.MAHENDRA.M B.A, LL.B.,
Prl. Civil Judge & JMFC,
Channapatna.

Dated this 19th day of February -2024

O.S. NO.291/2021

PLAINTIFFS : Sri. H.B. Suresh & Another
-V/s-

DEFENDANTS : Smt. Siddamma and Others

I.A.No.IV

APPLICANTS

PLAINTIFFS : 1. Sri. H.B. Suresh,
S/o Late Boraiah,
Aged about 47 years,
2. Smt. H.C. Kamalakshi,
W/o H.B.Suresh,
Aged about 37 years,
Both are R/at
Honganuru Village,
Kasaba Hobli,
Channapatna Talluk,
Ramanagara District.
(By Sri.C.K., Advocate)
-V/s-

**OPPONENTS/
DEFENDANTS**

: 1. Smt. Siddamma,
W/o Late Huchaiah,
Aged about 70 years,
2. Sri.Nagaraj,
S/o Late Chikkanna,
Aged about 60 years,



Both are R/at
Honganuru Village,
Kasaba Hobli,
Channapatna Talluk,
Ramanagara District.

3. Panchayath Development officer,
Honganuru Gram Panchayath,
Honganur,
Channapatna Taluk.

(By Sri.S.S, Adv.,for D1,
Sri.G.K.K., Adv.,for D2,
Sri.R.G.P., Adv., for D3,)

ORDERS ON I.A No.IV

The learned counsel for the plaintiffs has filed an I.A. IV U/o XXVI rule 9 r/w Sec.151 of C.P.C seeking appoint the court commissioner to measure and prepare proper sketch in respect of suit schedule property and also defendants property and submit the report before this court.

2. The plaintiff No.1 has filed sworn to an affidavit in support of I.A.IV and stated that, the present suit filed by the plaintiffs for the relief of declaration and permanent injunction in respect of suit schedule property. The defendants are filed their Written statement and denied the plaint awarements. Hence the appointment of Court Commissions for local inspection is required. The measurement of suit schedule property and defendants property is very much required. **Hence allow the I.A IV for appoint the court commissioner as prayed for.**



3. The learned counsel for the defendant No.1 has filed an objection to application and contended that, the application filed by the plaintiffs is not maintainable, it is liable to be dismissed. The defendant No.1 further contended that, the plaintiffs already filed an application U/o 39 Rule 1 and 2 of CPC. The case is set down for hearing on said application. In this stage the plaintiffs have filed present application. The plaintiffs have filed this suit for the relief of declaration and permanent injunction. The plaintiffs have mentioned the boundary in respect of suit schedule property in the plaint. The plaintiffs not described the property of defendants. The plaintiffs not explain that under what ground the appointment of court commission is required. The burden lies on the plaintiffs to prove their case. The plaintiffs have filed false application. **Hence dismiss the I.A IV filed by the plaintiffs with cost.**

4. The learned counsel for the defendant No.2 has filed an objection to application and contended that, the plaintiffs filed false application. The 2nd defendant further contended that, the 2nd defendant acquired the property by inheritance. The grand father of the defendant No.2 purchased the same. The 2nd defendant got khatha and he is in possession of the said property. **Hence dismiss the I.A IV filed by the plaintiffs with cost.**

5. Heard the arguments from learned counsel appearing for the plaintiffs and defendants and also perused the materials available on record.



6. Now the following points are arise for consideration of this court:-

POINTS

1. Whether the appointment of court commissioner is necessary for effective adjudication the matter in dispute?
2. What order?

7. Findings of this court as answer the above points as follows:-

- Point No.1 : In the Negative
Point No.2 : As per the final order
for the following:-

R E A S O N S

8. **POINT NO.1:-** The plaintiffs have filed this suit against the defendants for the relief of declaration and permanent injunction in respect of suit schedule property. The trial not yet commenced. In this stage the plaintiffs have filed present application. Under order 26 rule 9 of CPC reads as follows:

Commissions to make local investigation-

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 of 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. It is settled law that, the parties are required to prove their own case by way of evidence, therefore it is the duty of the plaintiffs or defendants to first give evidence in support of their case. The court made clear that, it is well settled law that in application invoked u/o 26 rule 9 of CPC, the plaintiffs are required to prove their case by giving evidence first and only then the commission can be assigned. In the present case the suit filed for the relief of declaration of title and permanent injunction. The burden lies on the plaintiffs to prove their case. In this case the evidence not yet commenced. If this application is allowed its amounts to collection of evidence.

10. As per the plaint averements the suit schedule property is the ancestral property of the plaintiffs, the defendant No. 1 and 2 are trying to illegally encroach 4 feet in the suit schedule property towards Eastern and Western portion. As per plaint averments, the defendants are not encroach the suit schedule property. Hence, the question of appointment of court commissioner does not arise at all. Moreover the plaintiffs not explained that under what purpose the commissioner may be



appoint. The documents are produced by the plaintiffs were disclosed that the plaintiffs already gave the representation to concerned authority for measure the suit schedule property. The burden always lies upon the plaintiffs to prove their case. The application filed by the plaintiffs is not deserves to be allowed. **Hence answer the point No.1 in the Negative.**

11. Point No.2 :- In view of above discussion this court proceeds to pass the following :-

ORDER

**I.A.IV filed by the learned counsel for
the plaintiffs U/o XXVI Rule-9 r/w Sec.151
of C.P.C., is hereby dismissed with cost of
Rs.200/-.**

(Dictated to the Stenographer and transcribed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 19th day of February -2024).

Sd/-
Prl. Civil Judge & JMFC,
Channapatna.



Order pronounced in open court

(Vide Separate Order sheet)

O R D E R

I.A.IV filed by the learned counsel for the plaintiffs U/o XXVI Rule-9 r/w Sec.151 of C.P.C., is hereby dismissed with cost of Rs.200/-.

Sd/-

Prl. Civil Judge & JMFC.,
Channapatna.