

ORDERS ON I.A.No.15

The plaintiff has filed this application under order 26 rule 9 r/w 151 of CPC, to appoint the court commissioner to inspect the suit schedule property and to ascertain the actual and physical possession of the property.

2. In the affidavit contended that the plaintiff filed this suit for declaration the defendants have created false documents and claiming possession over the property to substantiate claim of the plaintiff in respect of possession over the schedule property is just and necessary to appoint the court commissioner. Hence allow the application.

3. On the other hand the defendant submitted application is not maintainable. To drag on the case filed this application, present application is not maintainable at this stage. Hence, with these set of contention prays to reject the application.

4. Heard the counsel for the plaintiff and defendant.

5. After going through the entire materials available on record, the plaintiff filed this suit for declaration and injunction against the defendants in respect of the schedule property.

6. The plaintiff filed this application when the case is posted for further plaintiff evidence and till today the evidence of plaintiff not yet completed and filed this application for appointment of court commissioner to know that who is in possession and enjoyment of the schedule property, which is not permissible under law to collect the evidence court commissioner cannot be appointed.

As per the decision of Hon'ble High Court of Karnataka in ILR 2007 kar 3029 between Miss Renuka D/O Ramakrishna Reddy vs Sri Tammanna S/O Dyawappa Battal held that;

7. It is settled position of law that Court Commissioner cannot be appointed to collect evidence in support of a claim. After completion of evidence on

both the sides, if it is found that there is any ambiguity in the evidence adduced by the parties, then the Court may appoint a Commissioner for the purpose of clarification of such an ambiguity. In the instant case the evidence is not yet commenced and therefore the question of ambiguity in the evidence will not arise at this stage. The trial Court without considering the settled position of law committed an error in passing the impugned order appointing a Court Commissioner.

In view of the decision of Hon'ble High Court of Karnataka it is a settled position of law that, the court commissioner cannot be appointed to collect the evidence, the court commissioner may be appointed to aiding the court for proper adjudication of the matter in the present case before recording the evidence filed this application for collection of evidence. Hence, the present application is filed for appointment of commissioner which is not permissible under law. Hence under such circumstances, this court proceed to pass the following;

ORDER

The I.A.No.15 filed by the
plaintiff under Order 26 rule 9 r/w
151 of CPC hereby rejected

Call on for D/E, 14.07.2023

**Prl. Civil Judge & J.M.F.C.,
Kanakapura.**

