

1) OS No. 200-2017 Order on IA No. 8

IN THE COURT OF THE SENIOR CIVIL JUDGE AND

J.M.F.C.

AT: MAGADI

Present:- Sri. K. Mahadeva,
B.A., LL.B.,
Sr. Civil Judge & JMFC.
Magadi.

OS. No. 200-2017

Dated this the 9th Day of April 2018

Plaintiffs:-

Sri. B.G Ramaiah

(By. T.S.R advo...)

AND:-

Defendants:-

1. Sri. Mohammed Liyakat,
2. Sri. Abdul Haq
3. Sri. Mohammed Ameen Khan,
4. Sir. Krishnamurthy,
5. Smt. Muneera,
6. Smt. Reshma
7. Sri. Nafeez,
8. Sri. Atheeq,
9. Sri. Waseeq,
10. Sri. K.B Balaraju.

(Def. 4 by N.S.S advo...)

(Def. 5 to 9 M.S.N advo..)

(Def. 10 by N.S.S advo..)

(K. Mahadeva),,
Sr. Civil Judge & JMFC.,
Magadi.

ORDERS ON IA No. 8

The plaintiff has filed IA No. 8 U/o 26 rule 9 of CPC and prays to appoint Court Commissioner to survey the suit schedule property bearing Sy.No. 62/1 situated at Kudur village, to submit the report in respect of 9 gts of land in Sy.No. 62/1 situated at Kudur Village, Bounded as under:

East by Property of Rangappa

West by Road

North by Property of Syed Ibrahim

South by Property Syed Rasool

presently held by defendant No. 4.

2. The plaintiff has filed affidavit in support of IA No. 8 and contended that he is the plaintiff of this suit , he has filed the suit for declaration and other relief with regard to suit schedule property. He has purchased the suit schedule property, as per the sale deed dated 24.06.2016 executed through court process in EP no. 51/14. The said sale deed has been executed through court process on behalf of defendants 1 to 3. He is in possession and enjoyment of the suit schedule property as owner . He has been put in possession on 08.08.2016 through court process, the land bearing Sy.No 62/1 measuring 4 acre 13 gts, out of which 2 acre 1 gts is karab land , the remaining 2 acre 12 gts is the cultivable land. He is holding 9 gts of land , the defendant No. 4 is in possession of 39 gts of land as per the sale deed dated 14.12.2005. The said 39 gts of land is bounded as

3) OS No. 200-2017 Order on IA No. 8

East by Kalyana Mantapa of Kotteranganna, and land of K.R Krishnappa, West by Government road , North by property of Najim Unnisa W/o late Syed Gaspar presently holding by plaintiff . South by Government land. He has the property up to the immediate north of property of defendant No. 4. The defendant No. 4 deliberately disputed the identity and location of suit schedule property. Therefore it is necessary to appoint court commissioner preferably Commissioner of Survey Settlement Authority to resolve the dispute. The Identity and location of the property can be resolved through the survey , if the court commissioner is appointed , no hardship would be caused to the other side , he prays to allow the IA No. 8.

3. The defendant No. 4 to 10 have filed objections on IA No. 8

They contended that the application filed by the plaintiff is not maintainable and to be dismissed. The plaintiff has filed the suit for declaration and for permanent injunction and other reliefs in respect of Sy.No. 62/1A. The claim of the plaintiff goes back to 1946. The plaintiff ought to have continued location in respect of 9 gts of land has claimed by him before filing the suit. The plaintiff has not produced any documents as required U/s s 7 rule 3 to show the extent of the suit schedule property. The order 7 rule 3 and order 20 of CPC require the identity of suit schedule property and production of documents with regard to the said property as per Sec. 131 , (1) C of Karantaka land Revenue act. The registration of document to be made by

4) OS No. 200-2017 Order on IA No. 8

production of 11 E Sketch , therefore the 11 E sketch is mandatory As per Sec. 132 of land revenue act , the RTC is necessary to produce at the time of filing of the suit. But the plaintiff has not produced the said RTC in respect of suit schedule property. The defendant No. 5 to 9 also claims the same property against the defendants 1 to 3. The defendant No. 4 is no way connected to the suit schedule property. The suit schedule property is not in existence , there is no reference to show that the plaintiff is in possession of the suit schedule property. The plaintiff is attempting to collect the evidence by appointing court Commissioner . The Appointment court Commissioner is not permitted to collect evidence . Therefore they prays to dismiss the IA No. 8.

4. Heard the arguments of the learned advocates for the side.

5. The points that arise for my consideration are as under:

1. Whether the plaintiff has made out grounds to allow the IA No. 8 ?
2. To what order ?

6. My findings to the above points are as follows:-

Point No.1 In the **Negative**

Point No.2 : As per the final order,
For the following

REASONS

7 POINT NO. 1:- The plaintiff has filed IA No. 8 U/o 26 rule 9 of CPC and prays to appoint Court Commissioner to survey the suit schedule property bearing Sy.No. 62/1 situated at Kudur village, to submit the report in respect of 9 gts of land in Sy.No. 62/1 situated at Kudur Village, Bounded as under:

8. The plaintiff has produced the following Zerox and other documents

The plaintiff has produced the copy of the sale deed dated 24.06.2016, the copy of the letter dated 16.07.2016 of Assistant Registrar , Bangalore , the copy of the EC , Copy of the Survey documents. But they are not related to Sy.No. 62/1A. The Copy of the sale deed dated 03.07.1946, the copy of the sale deed dated 25.11.1959. The Copy of the rough sketch prepared by the plaintiff. The Copy of the partition deed dated 18.06.1969, the Copy of the sale deed dated 01.06.1998. The Copy of the agreement of sale deed dated 16.05.2007 by Mohammed Liyakath and Abdul Haq in favor of Mohammed Ameer khan. The Copy of the sale agreement dated 18.12.2007 by Mohammed Liyakath and Abdul Haq in favor of B.G Ramaiah , the Copy of the plaint in OS. No. 494/14. The Copy of the Judgment passed in OS. no. 494/14 (Old No. 363/12) The Copy of the order sheet of E.P No. 51/14. The Copy of the petition of EP No. 51/14, the Copy of the spot mahajar warrant in EP. No. 51/14. The Copy of the Delivery receipt. The Copy of the sale deed

6) OS No. 200-2017 Order on IA No. 8

dated 14.12.2015. The Copy of the sale deed dated 28.12.2015. The Copy of the sale agreement dated 17.10.2007. The Copy of the plaint in OS. no. 82/13, the Copy of the Judgment passed in OS. no. 82/13, the Copy of the decree of OS . No. 82/13, the Copy of the sale deed dated 05.01.2017. It is not necessary to give findings on the merits of the said documents at the stage of passing of order on IA No. 1.

9. The defendant No. 4 to 10 have produced the following Xerox documents , death certificate of Syed Jaleel who died on 02.08.2017, Copy of the sale agreement dated 17.10.2007 in favor of Syed Jaleel by liyakath. The Zerxo copy of the letter of thahasildar dated 22.06.2016. The Zerxo copy of the survey sktech. The Zerxo copy of the Akarband extract, The Zerxo copy of the 11 E sketches. The Zerxo copy of the order of DDLR dated 26.09.2017. The Zerxo copy of the Mahajar. The Monthly Kannada Paper namely, Kempegowda dated 9th November 2017.

10. This is the stage of IA No. 8 , therefore it is not necessary to give finding on the merits of the case and also on the merits of documents produced by the both the parties.

11. The plaintiff has described the suit property in the plaint as under:

The land bearing Sy.no. 62/1A situated at Kudur Village, Kudur Hobli, Magadi taluk measuring 9 gts with the

7) OS No. 200-2017 Order on IA No. 8

following boundaries.

East by	Property of Rangappa.
West by	Road,
North by	Property of Syed Ibbrahim.
South by	Property of Syed Rasool , presently held by defendant No. 4 .

12. The plaintiff has to establish his case by producing documentary and oral evidence . In this case the evidence has not been started . Before the starting of evidence , the plaintiff is not permitted to collect evidence in support of his case. The plaintiff has stated that the identity of the suit schedule property is in dispute. The said dispute to be raised by the plaintiff after the evidence of both the parties and not before the evidence. The plaintiff is having oppourtunity to file such an application after the recording of evidence by both the parties . That for any clarification after the evidence , the plaintiff may file the application for appointment of Court Commissioner. The plaintiff has to establish his case by oral and documentary evidence and he can not be permitted to collect evidence in any manner to prove his case and to support his contention. Therefore the appointment of court commissioner is not necessary at this stage. The plaintiff has not made out grounds to allow the IA No. 8. **Therefore I am holding this point in the negative.**

13. POINT NO.2:- In view of my findings to point No.1 and the reasons stated therein, I proceed to pass the following:-

ORDER

The IA No. 8 filed by the plaintiff U/o 26 rule 9 of CPC is here by dismissed

The plaintiff is at liberty to file application for appointment of Court Commissioner after the evidence of both the parties is over.

No order as to costs.

Dictated to the Stenographer, transcribed by him, corrected and signed by me and then pronounced in the open court on this the **9th Day of April 2018)**

(K. Mahadeva),
Sr. Civil Judge & JMFC.,
Magadi

Prs. /-.

9) OS No. 200-2017 Order on IA No. 8