



**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,
AT: MAGADI.**

Present:

Sri. Sandeep S. Reddy, B.A., LL.B.,
Addl. Sr. Civil Judge & JMFC., Magadi.

DATED: THIS THE 27th DAY OF MAY, 2024
O.S.No.226/2016

Plaintiff : Sri. Shivarudraiah
(By **Sri. A.S.S.** Advocate)

--V/s--

Defendants : Sri. Revannasiddaiah & Ors.,
(D1 & 4 by **Sri. G.P.** Advocate)
(D2 & 3 by **Sri. G.R.S.** Advocate)

ORDER ON IA NO.6 U/O.18 R.4(2 & 3) r/w. S.151 of C.P.C.,

The I.A.No.6 is filed by the plaintiffs U/O.18 R.4(2 & 3) r/w. Sec.151 of C.P.C., praying for appointing the court commissioner for cross-examination of PW-1.

2. In the accompanying memorandum of facts the learned advocate for plaintiff has stated that, the plaintiff aged about 90 years and he is suffering from age related ailments making it impossible for him to come

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to the court. Hence, the learned advocate for plaintiff has sought for appointment of court commissioner for recording the cross-examination.

3. The defendant has filed objections to the aforesaid application by stating that, the plaintiff though is aged 90 years still he is strong enough to appear before the Court and give evidence. The defendant has further stated that, on 18.07.2023 the PW-1 had appeared before the Prl. Sr. Civil Judge & JMFC., Magadi in O.S.No.225/2016 for giving evidence. Hence, the application filed by plaintiff needs to be rejected.

4. Heard learned advocate for plaintiff and defendant.

5. Considering the contentions of the parties, following points arise for my consideration.

1. Whether the applicant has made out a case to appoint the court commissioner to record the evidence?
2. What order?

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6. My findings for 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:-** The plaintiff has filed the aforesaid application praying for appointment of court commissioner for recording the evidence of PW-1.

8. In the application the plaintiff states that, PW-1 is aged about 90 years and he is suffering from serious age related ailments.

9. The defendant has objected on the ground that, PW-1 has already given evidence in O.S.No.225/2016 on 18.07.2023.

10. It is pertinent hereto mention that, the present court is on the 1st floor and as per the say of the plaintiff's counsel PW-1 cannot climb the stairs. Admittedly, PW-1 is aged 90 years and it can be presumed that,

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he cannot climb the stairs. Hence, the application filed by plaintiff needs to be allowed. Hence, I answer point No.1 in the affirmative.

11. **Point No.2:-** In view of reasons on point no.1, and in the interest of Justice and equity, I proceed to pass the following,

ORDER

I.A.No.6 is filed by the plaintiffs U/O.18 R.4(2 & 3) r/w. Sec.151 of C.P.C., is hereby allowed.

Learned Advocate Kumari Kavya M.R., has consented to be appointed as court commissioner for recording the evidence. Hence, learned Advocate Kumari Kavya M.R., is appointed as court commissioner.

The court commissioner's fee of Rs.3,000/- is fixed and plaintiff is directed to deposit the same before the court.

Issue commissioner warrant.

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **27th day of May, 2024.**)

(Sandeep S. Reddy)
Addl. Sr. Civil Judge & JMFC.,
Magadi.