

KASM210002922022



IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
AT HOSANAGARA

DATED THIS THE 3rd DAY OF MARCH 2023

Present:- Smt.Pushpalatha K. B.A.(Law), LL.B.,
Senior Civil Judge & J.M.F.C.,
Hosanagar.

O.S.24/2022

Plaintiff/s:-

K. Suresha
S/o Late K.S. Krishnamurthy,
Aged about 55 years,
Petty businessman,
R/o Girls School Road,
Ripponpete Town,
Baruve Village, Kerehalli Hobli,
Hosanagara Taluk.

[By Sri.D.N. Hiriyappa, Advocate]

-v/s-

Defendant/s:-

R.Aadarsha
S/o K.Ramesha,
Aged about 31 years,
Tailor, R/o Girls School Road,

Ripponpete Town,
Baruve Village, Kerehalli Hobli,
Hosanagara Taluk.

[By Sri.Vijay Hologadde, Advocate]

PARTIES TO I.A.No.IV

Applicant/s:- R.Adarsha
Defendant

[By Sri.Vijay Hologadde, Advocate]

V/s

Opponent/s:- K.Suresha
Plaintiff

[By Sri.D.N. Hiriappa, Advocate]

ORDER ON I.A. No.IV

This is an application filed by the defendant under Order 26 Rule 9 r/w/Sec.151 of C.P.C. for appointment of Court Commissioner for local inspection.

2. In support of the application defendant filed affidavit stating that the plaintiff has filed suit stating that B schedule

property is the part of suit A schedule property. However the plaintiff is not in possession of suit A and B schedule properties. The plaintiff has obtained grant by furnishing false information. As against the grant certificate the defendant has preferred appeal before the Assistant Commissioner and also the Deputy commissioner. Mother of defendant Shantha has purchased residential house measuring $11\frac{1}{2}$ x 41 feet in DR.No.129/2003-04 on 27.06.2003 as a guardian of minor defendant. The adjacent property was purchased by the plaintiff on 19.06.2003 and brother of plaintiff has purchased another portion on 23.08.2003. There is government land in Sy.No.49 on the western side of the house purchased by plaintiff, defendant and brother of the plaintiff. All of them are in possession of portion of said government land in Sy No.49 parallel to their property. The defendant has also constructed pooja room, kitchen, bath room and toilet in the government land in Sy.No.49. The defendant and his family members have been in unauthorized possession of portion of government land in

Sy No.49. Now it is necessary to appoint Court commissioner to find out truthfulness of case of the plaintiff. Hence prayed to appoint court commissioner.

3. On the other hand the plaintiff has filed objection denying affidavit averment and contended that the application is not maintainable. The defendant is trying to change nature of suit B schedule property without obtaining permission either from the Grama panchayath or from the court. Now the present application is filed to get report regarding changed nature of the suit schedule property. The appointment of court commissioner is not required at this stage and the application filed by the defendant is premature and is filed only to make unlawful gain if possible. Hence prayed for dismissal of the application.

4. Heard arguments on I.A.No.IV from both the sides and also perused the entire materials available on record.

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

1. Whether the defendant has made out grounds to appoint Court Commissioner for local inspection ?
2. 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 following;

REASONS

Point No.1

7. Present application is filed by the defendant for appointment of commissioner for local inspection. In the application the defendant has stated that the plaintiff is never in possession of suit A or B schedule property. The defendant has been in possession of suit B schedule property for more than 45 years. The defendant has put up Pooja room, bath room, toilet in the portion of government land in

SY No.49 situated on the western side of his house. Since said portion was in dilapidated condition in order to repair the portion of said house the defendant has removed tiles from the house. Now it is necessary to appoint court commissioner to report regarding present status of the suit schedule property.

8. The plaintiff has objected the application stating that the application is filed only for the purpose of collection of evidence regarding changed nature of the suit schedule property. If the commissioner is appointed then the plaintiff will be put to hardship because by appointing court commissioner the defendant is trying to get report regarding the nature of the suit schedule property which is quite different from the nature of the suit schedule property as on the date of suit. Further the application is premature one and at this stage the application can not be considered.

9. Counsel for the plaintiff has relied on **judgment of Hon'ble High Court of Karnataka in the case of R.Devaraju V/s Seenappa and another in Writ Petition No.4614/2014**, in which it was observed that;

“He also submitted that the trial court taking into consideration that the application is premature and no ground is made out to appoint the court commissioner at this stage has rejected the application. Therefore, the impugned order does not call for interference. It is relevant to note, the suit is for declaration, mandatory injunction and other reliefs. At the stage of evidence the petitioner has filed application for appointment of the Court commissioner. The Trial court taking into consideration that the application is premature and appointment of the Court Commissioner can be considered at a later stage has rejected the application. I do not find any error or illegality in it. Therefore, the impugned order does not not

call for interference. There is no merit in this writ petition and therefore, it is liable to be dismissed.

10. It is the specific argument counsel for the defendant that in order to come to conclusion that the suit schedule property does not belong to the plaintiff it is necessary to appoint court commissioner and he has made submission that if it is reported that the property of the plaintiff comes with in the property which is in possession of the defendant he is ready to handover possession of the said portion in favour of the plaintiff.

11. The present suit is filed by the plaintiff stating that he is the owner of the suit schedule property the defendant has taken illegal possession of the suit schedule property. Even as per the plaintiff as on the date of filing of the suit, Suit B schedule property was in possession of the defendant. On perusal of the prayer made in the application it goes to show

that the intention of the defendant by filing present application is only to collect evidence regarding possession of the defendant over the suit schedule property. On perusal of document produced before the court it goes to show that already the plaintiff has filed his affidavit in lieu of chief examination and now application is filed for appointment of court commissioner. It is well settled principle of law that the commissioner can not be appointed for collection of evidence. Further at this premature stage appointment of court commissioner is not necessary. Moreover only after conclusion of trial if courts find that to meet the ends of justice it is necessary to appoint the commissioner, then only the commissioner can be appointed. Further as per the judgment of Hon'ble High Court of Karnataka relied on by counsel for the plaintiff also this is not a proper stage to appoint court commissioner for local inspection. Under such circumstances I am of the opinion that the application filed by the defendant for appointment of court commission at this premature stage is not maintainable. Hence it is clear that

the defendant has failed to make out grounds for appointment of court commissioner for local inspection. Accordingly Point No.1 is answered in the Negative.

Point No.2:-

12. In view of my findings on point No.1, I proceed to pass the following

ORDER

The I.A.No.IV filed by the applicant/defendant Under Order 26 Rule 9 and R/w Sec.151 of CPC is hereby dismissed with costs of Rs.200/-.

(Dictated to the Stenographer directly on the computer, corrected and verified by me and then signed and pronounced by me in the open Court on this the 3rd Day of March 2023)

**(Pushpalatha K.)
Sr. Civil Judge & JMFC,
Hosanagar.**

Order pronounced in open Court
(Vide separate order)

ORDER

The I.A.No.IV filed by the applicant/defendant Under Order 26 Rule 9 and R/w Sec.151 of CPC is hereby dismissed with costs of Rs.200/-.

(Pushpalatha K.)
Sr. Civil Judge & JMFC,
Hosanagar.