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**IN THE COURT OF I ADDL. CIVIL JUDGE & JMFC., AT
BHADRAVATHI.**

Present: **Sri. RAVI KUMARA. V. BA.L.,L.L.B.,**
I Addl. Civil Judge & JMFC.,
Bhadravathi.

DATED THIS THE 20th DAY OF MARCH-2025

O.S.No.521/2023

Plaintiff : Smt. Nagaveni

V/s

Defendant : Sri.A.G.Suresha

I.A.No.V

Applicant/defendant : A.G.Suresha S/o late A.G.
Eshwarappa, 54 years, Agriculturist,
R/o Anaveri, Arakere Beedi,
Holehonnuru II Hobli, Bhadravathi
Taluk.

(Rept by Sri. M.Nagarajappa, Adv)

V/s

Opponent/plaintiff : Smt.Nagaveni W/o Balasubbaiah, 43 years, Housewife, R/o K.K.Road, Sasvehalli Village, Bhadravathi main road, Anaveri Village, Holehonnuru Hobli, Bhadravathi Taluk.

(Rept by Sri. Deepu E.C., Adv)

Provision Under which the application Is filed	Order 26 Rule 9 & 10 R/w Sec.151 of CPC
Relief sought for	Appointment of Court Commissioner
Date of application	27.11.2024
Number of application	I.A.No.V
Date of objection	04.12.2024
Order date	20.03.2025

ORDER ON I.A. NO.V

The defendant filed this IA under Order 26 Rule 9 and 10 R/W Section 151 of CPC praying to appoint an advocate court commissioner for the purpose of ascertaining any encroachment made by the plaintiff in the property belongs to the defendant in Sy.No. 4/2B of Anaveri Village and to measure the suit property belongs to the plaintiff.

2. In his affidavit accompanying to the IA, the defendant has stated that, the plaintiff has encroached nearly 30' of land

belongs to him in Sy.No. 4/2B and has also cut down some areca trees grown in the said land. He contending that, the plaintiff has made construction in the said encroached area and therefore, it is necessary to appoint the Court commissioner to measure the suit property and also the land belongs to him. He contending that, if the IA is not allowed, he will put to great loss and inconvenience and no harm will be caused to the plaintiff if the IA is allowed. Accordingly, he prays to allow the I.A.

3. Per contra, the plaintiff filed her objection and praying to dismiss the IA as not maintainable either on law or on facts. It is contended by the plaintiff that, the defendant filed this IA only to protract the proceedings. She contending that, she is the absolute owner of the suit property and earlier, the same was encroached by the defendant towards its northern side. It is contended that, the said encroachment was removed with the help of PDO, Gram Panchayath and the plaintiff was put in possession of the said encroached area and the plaintiff has constructed a house in her property by cleaning stray areca plants in its backyard. The plaintiff contending that, the defendant along with his supporters has interfered with her possession in the suit property and thus, she

inclined to file this suit against him. The plaintiff contending that, the suit of her is for the relief of bare injunction and therefore, the appointment of Court commissioner for measuring the property of her or the defendants will amounts for collection of evidence. Hence, the plaintiff prays to dismiss the I.A.

4. In view of the rival contentions raised by both the parties, the following points are arisen for my consideration;

1. **Whether the appointment of court commissioner is necessary for elucidating the real controversy between the parties?**
2. **What order?**

5. I have heard both the sides on IA.

5.1. In support of his argument, the learned counsel for the applicant/defendant has relied upon the following decisions:

- i) (2021) 2 KCCR 1741
R.Venkatachalapathy Vs. R.Sreerangamma
- ii) (2023) 1 KCCR 637
Sri. Shadaksharappa Vs.Kumari Vijayalaxmi & others.

6. Perused the entire material available before this court.

7. My answers to the above points are as follows,
Point No.1 : **In the Negative.**
Point No.2 : **As per final order,**
for the following;

REASONS

8. **POINT NO.1:** The material on record would show that, the plaintiff filed this suit seeking the relief of permanent injunction in respect of a house property bearing No. 429/28/1 measuring 6.096 meters x 18.288 meters situated at Anaveri Village. As already said, it is the claim of the plaintiff that, she is the absolute owner of the suit property having purchased it under a registered sale deed dated 24.08.2015 through her vendor Kariyamma. The plaintiff alleged that, during 2023, she had applied for measurement of the suit property as she was intended to construct a house therein. During such measurement, an encroachment of suit property by the defendant, who is the adjacent land owner, is found towards the northern side of the suit property. That, the said encroachment was removed by the panchayath officials and the possession of the entire suit property was restored to the plaintiff. That, the plaintiff has started the construction of house within the presence of the defendant and by obtaining necessary licence from the panchayath. It is contended by the plaintiff that, in the meanwhile, the defendant filed a suit for bare injunction against her on imaginary cause of action in O.S.280/2023 by seeking permanent injunction. It is further

alleged by the plaintiff that, having filed the above said suit and suffering dismissal of IA for temporary injunction order in his favour, the defendant started to interfere with her possession in the suit property and to disturb the construction work with his supporters. Thus, the plaintiff claims to have filed this suit.

9. Interestingly, in his written statement, the defendant has admitted the measurement of the suit property. But, he contending that, the plaintiff constructing the house without obtaining any approved plan by the concerned authorities. He also contending that, the plaintiff has created the southern boundary of the suit property in the documents and also encroached the property belongs to him in Sy.No.4/2B and Sy.No.7/1 by removing the boundary stones and barbed wires, for which he filed suit in O.S. 280/2023. The defendant claims that, there is a boundary dispute in respect of the southern side of the suit property and hence, it is necessary to appoint a Court Commissioner.

10. It is pertinent to note that, the suit is in its initial stage and pending for hearing on IA No.I filed by the plaintiff under Order 39 Rule 1 and 2 CPC. When the matter was posted for hearing the defendant on the said IA, he come up with the present IA seeking

appointment of Court Commissioner. No doubt, as per the ratio laid down by the Hon'ble High Court in the judgments, upon which the learned counsel for the defendant is relying upon, it is very well settled that, there is no bar to a party to file application for appointment of court commissioner and there is no bar to the Court to appoint the Court Commissioner when it is necessary for deciding the interim applications and while considering any other interlocutory applications seeking interim measure. It is also settled that, a Court commissioner can be appointed in a suit for permanent injunction when there is a dispute regarding identification, measurement or location of the suit property.

11. However, in the case on hand, the defendant praying for appointment of Court Commissioner to measure his property in Sy.No.4/2B of Anaveri Village to ascertain the encroachment by the plaintiff in the said property. No doubt, the defendant is also seeking to appoint the Court Commissioner to measure the suit property also. But, having clearly admitted the entire measurement of the suit property, the defendant is disputing the southern boundary of the said property. The IA would reveal that, the defendant is intending to obtain a report from the Court Commissioner regarding the alleged

encroachment of his property made by the plaintiff. Admittedly, the defendant is already filed a suit in O.S. 280/2023 in respect of the said encroachment and therefore, he is at liberty to seek for appointment of commissioner in the said case only. Here, the Court is to decide whether the plaintiff is in possession of the suit property as on the date of filing this suit or not. The dispute in respect of the southern boundary of the suit property raised by the defendant neither aid this Court at this stage of the suit nor is necessary for elucidating the real controversy between the parties.

12. On careful perusal of the IA averments, it is found that, the defendant is intending to collect the evidence in respect of the alleged encroachment of his property in Sy.No. 4/2B and not in respect of the suit property. It appears that, the defendant wants to collect evidence to help his suit in O.S. 280/2023 and not for the purpose of elucidating the real controversy in dispute between him and the plaintiff in this suit. Thus, having found the IA devoid of merits, this Court is of the opinion that, the present IA liable to be dismissed.

13. So far as the ratio laid down by the Hon'ble High Courts in the case of **Venkatachalapathy** and **Shadaksharappa, (supra)**, is

concerned, the facts and circumstances that were available before the Hon'ble High Court in those cases are totally different from one available in the case on hand. Therefore, the said facts and circumstances can clearly distinguishable with the case on hand and the ratio laid down therein will not aid the plaintiff to have the relief sought in this IA. Accordingly, point No.1 is answered **Negative**.

14. POINT No.2: Resultantly, I proceed to pass the following;

ORDER

The I.A No.V filed by the defendant
U/o XXVI Rule 9 and 10 R/W Section 151 of
C.P.C is dismissed.

No order as to cost.

(Dictated to the Stenographer, translated, computerized by her, corrected and then pronounced by me in open court this 20th day of March-2025)

(Ravi Kumara V.)
C/c I Addl. Civil Judge & JMFC.,
Bhadravathi.