

**Orders on IA No.9 filed under Or. 26 Rule 9 read with sec. 151
of C.P.C.**

The applicant/plaintiff has brought the application under Or. 26 Rule 9 read with sec. 151 of C.P.C. with a prayer to appoint DDLR as a Court Commissioner for local inspection and measure the suit property and submit a report and road prepared by the state authorities or national highway and also to show the auto stand, water tank in existence if any.

2. It is submitted in the affidavit filed in support of this application that, the plaintiff has brought the suit against defendant seeking for relief of mandatory injunction for removal of auto stand and such other constructions made in front of suit property. That the defendant has taken specific stand that auto stand and other construction are done in the gomala land. Further it is the specific case of the plaintiff that the auto stand and other construction are constructed in front of the plaintiff's house which diminished the value of the suit property and in order to remove such construction the suit has been brought. Hence for proper adjudication of the case and to bring to the notice of the court that the construction has been made in front of the suit property, it is just and necessary to appoint DDLR as the Court Commissioner. Hence prays to allow the application.

3. Per contra, the learned AGP filed objections contending that the B schedule property do not belong to the plaintiff and hence the application is not maintainable and the plaintiff has not approached the tribunal for compensation. Further contended that during the time of road widening it has come to the light that B schedule do not belong to the plaintiff and Ex.D.2 and D.3 comes in support of the defendant case which reveals that the construction work done in the place which do not belongs to the plaintiff. Hence prays to dismiss the application.

4. Heard and perused the materials placed on record.

5. The point that arises for consideration is as follows:

1. Whether the defendants made out sufficient grounds to allow the application?
2. What order?

6. The findings on the above point is as under:

Point No.1: In the **affirmative**

Point No.2: As per final order for the
following:

REASONS

7. Point No.1:

On perusal it is the specific case of the plaintiff that construction work is done in and around the plaintiff's house which diminished value of suit property and in order to establish the same the appointment of Court Commissioner is required. At this stage without touching the merits of the case if the evidence of DW.1 is perused who was examined as DW.2 and he deposed as follows:

'ಸಾಕ್ಷಿಯು ದಿಶಾಂಕ್ ಆಫ್ ನಲ್ಲಿ ತೆಗೆದಂತಹ ಸ್ಕೆಚ್ ನ್ನು ನೋಡಿ ಗುರುತಿಸಿದ್ದು ಸದರಿ ಸ್ಕೆಚ್ ಪ್ರಕಾರ ರಸ್ತೆಯು ಸ.ನಂ 1 ಮತ್ತು 10 ರ ನಡುವೆ ಹಾದು ಹೋಗಿರುವ ರಸ್ತೆ ಆಗಿದ್ದು ಎಂದು ಒಪ್ಪಿದ್ದರಿಂದ ಸದರಿ ದಾಖಲೆಯನ್ನು ನಿಪಿ-14 ರಲ್ಲಿ ಬೈಂದೂರಿಗೆ ಹೋಗುವ ರಸ್ತೆಯನ್ನು ಸಾಕ್ಷಿ ನೋಡಿ ಗುರುತಿಸಿದ್ದು ಸದರಿ ಭಾಗವನ್ನು ನಿಪಿ-14 ಬಿ ಎಂದು ಗುರುತಿಸಲಾಯಿತು. ಸದರಿ ನಿಪಿ-14 ರಲ್ಲಿ ನೀಲಿ ಬಣ್ಣದಲ್ಲಿ ಗುರುತಿಸಿರುವುದು ತಣ್ಣೀರು ಹಳ್ಳ ಎಂದು ಸಾಕ್ಷಿ ಒಪ್ಪಿದ್ದರಿಂದ ಸದರಿ ಭಾಗವನ್ನು ನಿಪಿ-14 ಸಿ ಎಂದು ಗುರುತಿಸಲಾಯಿತು. ಸದರಿ ತಣ್ಣೀರು ಹಳ್ಳ ಭದ್ರಾ ನದಿಗೆ ಹೋಗಿ ಸೇರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ನಿಪಿ-14 ರಲ್ಲಿ ಸ ನಂ 242, 2, 1 ಸ.ನಂ. 10 ರ ಮಧ್ಯದಲ್ಲಿ ಇರುವ ಜಾಗ ಗ್ರಾಮಾ ಶಾಣಾ ಜಾಗ ಎಂದರೆ ಸರಿ.

8. Hence the witness is not definite that the said place where construction has been done belongs to Gomala land or falls within the jurisdiction of Gramatana. Further the Ex.D.3 and Ex.P.14 are two different documents which speaks different views. Hence for the proper adjudication of the case and to provide fair opportunities and to avoid multiplicity of proceeding the application deserves to be allowed. Hence this court *answered Point No.1 in the affirmative.*

9. Point No.2:

For the above said reasons on Point No.1, this court proceed to pass the following:

ORDER

The application filed under Order 26 Rule 9 R/w Sec.151 of CPC filed is hereby allowed.

Accordingly DDLR is hereby appointed as Court Commissioner to perform ministerial work.

Further the commissioner fee fixed for Rs.2000/-.

Issue commissioner warrant and required copy
of documents.

For memo of instruction and for deposit of
commissioner fee.

Call on 10.03.2023

Sd/-
Civil Judge and JMFC,
N. R. Pura