

ORDERS ON I.A. NO. 3

The plaintiff has filed the instant application Under Order 26 Rule 9 of CPC seeking an order of this court to appoint a court commissioner to conduct local investigation of suit schedule property by measuring and locating the boundaries.

The Counsel for the defendant No.1 has submitted that, the instant application may be allowed and rest of the defendants were placed ex-parte.

The suit is one for perpetual injunction simplicitor and the plaintiff has contended that the suit schedule property is his ancestral property and he acquired the same in a partition effected through panchayath parikath dated 28-10-2007. It is further contended that the defendants are the adjacent land owners of the suit schedule property and they have attempted to encroach upon the suit schedule property which constrained him to institute the present suit.

Though the application for appointment of commissioner should preferably be considered after completion of evidence of suit parties, the defendant No.1 who appeared before the court has given his consent to allow the application. Though collection evidence should not be the intention of the application, if it helps in determining and resolving dispute in respect of boundary and measurement, the application can be treated as meritorious. Thus the report of local investigation of

commissioner will aid this court in determining the issues as the suit parties are not in consonance with the boundaries and measurement and also possession of the suit schedule property. Therefore by considering the dictum laid by the Hon'ble Supreme Court in **Shreepat Versus Rajendra Prasad and others reported in J.T 2000 (7) SC 379** and having regard to the fact that the defendant No.1 has consented to allow the application, this court inclines to allow the same. Hence the following:

ORDER

I.A No. III filed by the plaintiff U/o XXVI Rule 9 of CPC is hereby allowed.

The Taluka Surveyor attached to the office of Tahasildhar, Gubbi is hereby appointed as Court Commissioner and he is hereby entrusted to conduct local investigation in the suit schedule property by measuring and locating the boundaries.

The Court Commissioner fee is tentatively fixed at Rs. 3,000/-.

The plaintiff shall deposit commissioner fee and shall pay process fee.

The suit parties are at liberty to furnish memo instructions.

To deposit Commissioner fee by 01.10.2020.

**Addl.Civil Judge and JMFC,
Gubbi**