



IN THE COURT OF ADDL. CIVIL JUDGE AND JMFC.,

KUNIGAL

Present:

Sri. Manjunath Shivapooji, B.A., L.L.B.,

Addl. Civil Judge & JMFC., Kunigal.

Dated: 9th Day of December, 2024

O.S.NO.686/2024

Plaintiff : Savitramma

V/s

Defendants : Mahadevaiah and others

IA No.2

Applicant : Mahadevaiah and others

V/s

Respondent : Savitramma

ORDERS ON APPLICATION FILED BY THE DEFENDANT No.1

UNDER ORDER XXVI RULE 9 OF CPC

The defendant No.1 has filed IA U/O 26 Rule 9 of CPC,
for appointment of court commissioner to visit the spot to fix
the boundaries in suit property.



2. The applicant in his affidavit has stated that the boundaries of property of plaintiff and defendant is in dispute. Hence, it is necessary to appoint court commissioner as to elicited the matter in dispute. Hence, he has filed this application to appoint court commissioner to visit the spot and determine the subject matter is in dispute.

3. The defendant has filed memo and contended that, she has no objections to appoint court commissioner to visit the spot for the purpose of visiting the spot and determine the question in dispute.

4. Heard arguments.

5. In the light of the above contentions, the infra points that would arise for my consideration.

1. Whether the applicant has made out a case to appoint a court commissioner as prayed in the application?



2. What order?

6. My findings on 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** : This is a suit for the relief of permanent injunction. The applicant further argued that, now it is just and necessary to appoint court commissioner to elucidating the subject matter in dispute as to determined the existing boundaries of suit schedule property.

8. On the other hand, the plaintiff also consent to appoint court commissioner.

9. Now, this court wants to relied upon the decision of Hon'ble High Court of Karnataka in 2023 ICC 57(Kar). In the said decision Hon'ble High Court, it clarified as to in what cases court commissioner can be appointed and in which stage



court commissioner can be appointed and for what purpose court commissioner can be appointed.

10. The Hon'ble High Court has held that, the appointment of a commissioner for local inspection, or scientific /forensic investigation/expert's opinion is indeed to secure the evidence and the same is not only permissible but also desirable in certain cases. The report, given the intrinsic complexities of matter in a case, may go a long way in arriving at a just decision or assisting the court to appreciate the other evidence on record or fact situation in a proper perspective. If the report of the Commissioner is nothing to do with the subject matter in dispute, then there cannot be an order appointing the commissioner. Order appointing a commissioner can be made only if the commissioner's report become a relevant piece of evidence. That being the position, the contention that the appointment of court commissioner amounts to collection of evidence has no merit.



11. Further, the Hon'ble High Court has clarified that, at what stage of the proceedings in a suit, the application can lie? As could be easily noticed from the provision, the provision is not 'stage' centric. Thus, the provision can be invoked either before the commencement of the trial or after, If the application is filed before the commencement of the trial, the court having regard to the pleadings and records may allow such application before the commencement of the trial.

12. The discretion, though lies with the court, as to appoint the commissioner before the trial or after the trial, the decision must be taken with due regard to the possibility of reducing or eliminating the need to record the oral evidence of witnesses to prove an issue which could be effectively decided with the aid of the report. More often than not, in disputes relating to the existence of pathway, stream, pond, well or disputes relating to the boundary between adjoining holders, encroachment, easement of air and light, construction of



building in violation of setback rules, or relating to the authenticity of a document, signature/thumb impression to name a few by way of illustration, a report secured before the trial may cut short the trial in as much as the party relying upon the report may not examine multiple witnesses to prove the matters covered by the report. The party may simply rest his case based on his evidence and the report.

13. On the basis of direction given by Hon'ble High Court and on careful perusal of provision Order 26 Rule 9 of CPC, this court comes to the conclusion that, considering the controversy involved in this case, this court is inclined to appoint court commissioner to visit the spot and to determine the boundaries of suit property. If the court commissioner is appointed, no harm would be cause to plaintiff.

14. In view of the above decisions, if present case is discussed, it is clear that, the crux of issue is with respect to boundaries of suit property. On perusal of the application, it is



clear that the proposed appointment of the Court Commissioner is not for the purpose of collection of evidence as to the possession, but only with respect to determine the boundaries of suit schedule property and extent suit property. In view of the above, in order to curtail the duration of litigation, this court of the opinion that the application deserves to be allowed. Hence, point No.1 in ***Affirmative.***

15. Point No.2: For the above discussed reasons, this court proceeds to pass the following:

ORDER

IA filed by the defendant No.1
under Order XXVI rule 9 of CPC is
hereby allowed.

The Taluk Surveyour is hereby
appointed as Court Commissioner to
make local investigation for the purpose
of determining the boundaries of suit



property.

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

To furnish memo of instruction by
17.12.2024.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the 9th day of December, 2024]

Sd/-
Addl. Civil Judge and JMFC.,
Kunigal.