

**IN THE COURT OF THE PRINCIPAL CIVIL
JUDGE & JMFC, MADHUGIRI, AT MADHUGIRI**

Dated this the 5th day of November 2019

PRESENT :

SRI ABDUL RAHIMAN. A. MULLA

B.A.L, L.L.B (Hons.)

Prl. Civil Judge & JMFC,
Madhugiri.

MIS. No.2/2017

PETITIONER : Sri. Ranganatha, P.D.O.,
S/o Thimmanna
aged about 45 years
R/o Marithimmanahalli village
Kasaba hobli, Madhugiri taluk.

(By Sri. M.R.J./V.K.S, Advocate)

Vs/-

RESPONDANT : Nagabhushana S/o Nagedraiah
aged about 40 years
R/o Marithimmanahalli village
Kasaba hobli, Madhugiri taluk.

(By Sri. N.N., Advocate)

I.A. No.IV

Applicant : Nagabhushana

.... Respondent

Vs/-

Opponent : Ranganatha

.... Petitioner

* * *

ORDERS ON I.A. No.IV FILED BY RESPONDENT UNDER
ORDER 26 RULE 9 OF C.P.C

This is an application filed by respondent praying this court to appoint technical commissioner i.e., ADLR, Madhugiri to identify suit schedule property and also encroached portion in Sy.No.52/2.

2. In the affidavit annexed to the application, respondent averred that petitioner has got suit property through rectification gift deed dated 19-08-2015 and both Putteeramma and petitioner have encroached landed property by constructing house in land bearing Sy.No.52/2 belonging to respondent about 4 years back. On the guise of sale deed dated 10-05-1982, mother of petitioner got decree in O.S.No.34/1991 and taking advantage of the same, petitioner and his mother encroached land in Sy.No.52/2 by playing fraud. Hence appointing technical commissioner is required for identity of suit schedule property and also encroached portion in Sy.No.52/2 and amongst these grounds, prayed to allow the application.

3. The petitioner filed his objections to the application contending that petitioner and her under predecessors have perfected their title over land by adverse possession and they are in enjoyment of the same and this court was pleased to declare mother of petitioner as owner in possession of Sy.No.25/2 and unless and until, decree is set aside by competent authorities, question of measuring land does not arise. The scope of petition is limited and if respondent is having any grievance, he can agitate the same in separate proceeding and amongst these grounds, prayed to reject the application with exemplary costs.

4. Heard, perused the records placed before the court.

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

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

6. My findings to the above points are as under :

Point No.1..... In the negative,

Point No.2.....As per the final order

for the following :

REASONS

7. **POINT No.1** : Admittedly this petition is filed by petitioner against respondent under Order 39 Rule 2A of CPC seeking order for attachment of property of respondent, as he is guilty of disobedience and to detain him in civil prison.

8. It is the contention of respondent that about 4 years back, petitioner constructed house by encroaching land in Sy.No.52/2 belonging to respondent and hence technical commissioner is required for identification of suit schedule property and also encroached portion of property. In support of his contention, respondent produced in all 3 documents.

9. It is pertinent to note that if at all as per the say of respondent, petitioner encroached his property about 4 years back and got constructed building, then there is no explanation coming forth from the side of respondent as to why he has not taken any steps to prevent the same from past 4 years and only thought of filing this application, when this petition came to be filed by petitioner.

10. Moreover the relief claimed in the application is nowhere concern to suit schedule property and if at all technical commissioner as prayed by respondent is appointed, no purpose would be served in this petition. There are no reasons forthcoming from respondent as to why he has kept quite for all these years without taking any preventive steps to restrain the illegal acts, if any. No bonafide and sufficient grounds have been made out by respondent to allow the application. Hence for the above said reasons, I answer point No.1 in the 'Negative'.

11. **POINT No.2** : For the reasonings and findings given to point No.1, I proceed to pass the following :

ORDER

I.A. No.IV filed by respondent under Order 26 Rule 9 of C.P.C is hereby rejected.

Parties to bear their own costs.

(Typed to my dictation by the Stenographer directly on Computer, then corrected, printout taken, signed by me and then pronounced in the open court on this **5th day of November 2019**)

(Abdul Rahiman A. Mulla)
Prl. Civil Judge & JMFC,
Madhugiri.