



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC AT
MADHUGIRI**

Dated this the 17th day of August 2023

PRESENT :

SRI RAGHUNATHA GOWDA K.T.

B. Com., L.L.B.

**Prl. Civil Judge & JMFC,
Madhugiri.**

O.S.No.151/2018

PLAINTIFF : Sri. B.K. Banappa
S/o Late Kariyappa,
aged about 85 years,
R/o VSSN Road,
Badavanahally,
Dodderi Hobli,
Madhugiri Taluk.

(By Sri G.B. Halappa, Advocate)

Vs/-

DEFENDANTS : 1. Sri. Chikkaranganayaka
S/o Ranganayaka,
aged about 50 years,

2. Sri. Ranganayaka
S/o Chikkaranganayaka,
aged about 75 years,
Near Milk Dairy,
Badavanahally, Dodderi Hobli,
Madhugiri Taluk.

(By Sri B.B. Manjunatha, Advocate)



I.A. No.III

Applicant : Chikkaranganayaka & anotherDefendants

Vs/-

Opponents : B.K. Banappa

..... Plaintiff

* * *

ORDER ON I.A. No.III

When the matter posted for cross-examination of PW-1 at this stage the present application filed by the defendant under order XXVI Rule 9 of CPC to appointment of Technical Commissioner i.e., ADLR, Madhugiri attach to the office of Tahasildar, Madhugiri to visit the spot, measure the land and fix the boundary mentioned below and submit his report in the interest of justice.

Schedule : Land bearing Sy.No.12/1A3 measuring 0.07 guntas situated at Badavanahalli village, Dodderi Hobli, Madhugiri Taluk.

2. In support of this application the defendant No.1 filed his affidavit he contended that the plaintiff filed this suit against themselves for relief of Permanent Injunction in respect of suit schedule property and he contended that we are trying to interference with the plaintiffs peaceful possession and enjoyment of the suit schedule property.



3. Further they are contended that they are in possession and enjoyment of land bearing Sy.No.12/1A3 measuring 7 guntas. The Sathyanarayana, Suryanarayanashetty and Suryanarayana are adjacent land owners but the plaintiff wrongly mentioned the boundary. Further they are contended that the plaintiff is trying to encroach their property towards eastern side so that reason they have preferred petition before the survey authorities dated 05-02-2018 to measure the land and fix the boundaries that whether the plaintiff has encroached or not towards eastern side of their property. Further they are contended that after considering our application the survey authorities have visited the spot at the time the plaintiff obstructed the survey work.

4. Further they are contended that in order to ascertainment of whether plaintiff has encroached their property or not to appoint a Technical Commissioner to visit the spot and measure their land. If the said application is allowed no loss or hardship caused to the plaintiff and to resolve the dispute the appointment of commissioner is very much necessary. Hence he prays to allow this application.

5. Per contra the plaintiff counsel filed objection to the said application and contended that the application filed by the defendant is not maintainable either in law or facts. Further he contended that he filed the suit against defendants for relief of



Permanent Injunction and the scope of the suit is very limited and the defendant has not sought any counter claim and the property claim by him in different survey number, which is nothing to do with the suit property. Further he contended that the defendant filed this application to collect the evidence through Court Commission is not tenable. Hence he prays to reject the said application.

6. Heard the arguments of both side, perused the records.

7. The following points arise for my consideration.

1. Whether the appointment of court Commissioner is necessary at this stage ?
2. What order?

8. My answer to the above points is as follows:

1. Point No.1 : In the Negative
2. Point No.2 : As per the final order
For the following

REASONS

9. **Point No.1:** On perusal of the records the plaintiff filed the suit against defendants for relief of Permanent Injunction. Now the defendants filed this application to appoint the ADLR, Madhugiri as a Court Commissioner, to measure and identify the boundaries of their property. The main contention of the defendants that the plaintiff is encroached eastern side of their property. Further the scope of the suit i.e., relief of Permanent



Injunction is very limited to prove the possession and interference. Further the defendant has not filed this application to measure the suit schedule property but he sought in the said application to measure their land i.e., Sy.No.12/1A3 to extent of 7 guntas and the said property is not subject matter of this suit and also the defendants have not sought any counter claim against plaintiff.

10. Further at this juncture the defendants have not produced any single document to show that the plaintiff has encroached their property as alleged in the written statement. Further as per order 26 rule 9 of CPC stated as under;

Commissions to make local investigations.—In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court: Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.



11. The above said section makes it clear that the appointment of commissioner to local investigation to be requisite or proper for the purpose elucidating any matter in dispute under such circumstances the appointment of commissioner is required and if there is any ambiguity or necessity. Further, there is an ambiguity in the both the parties to resolve the dispute between the parties. Under such circumstances the appointment of commissioner is required. Further the evidence of the both parties is not yet completed and the present application filed by the defendants in order to collection of evidence and the said application is not maintainable. Hence there is no merit in the said application. In view of discussion I answer the point No.1 in the Negative.

12. **Point No. 2:** For the above discussion I, proceed to pass the following order;

ORDER

The I.A. No.III filed by the defendants
under Order XXVI Rule 9 of CPC is hereby
rejected.

No order as to cost.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in open court on this **17th day of August 2023**)

Sd/-

(Raghunatha Gowda K.T.)
Prl. Civil Judge & JMFC,
Madhugiri.