



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

Dated this the 14TH day of March 2024

PRESENT :

SRI RAGHUNATHA GOWDA K.T.

B. Com., L.L.B.

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

O.S.No.198/2020

- PLAINTIFFS :**
1. Sri. Ranganatha
S/o late Rangappa,
aged about 57 years
 2. Sri. Krishnappa
S/o late Rangappa,
aged about 55 years
 3. Sri. Venkataswami
S/o late Anjinappa,
aged about 53 years
 4. Sri. Lakshminarayana
S/o late Anjinappa,
aged about 50 years

All are R/o Adavinagenahalli
Village, Suddekunte Post,
Kodigenahalli Hobli,
Madhugiri Taluk.

(By Sri H.V.M., Advocate)

Vs/-



DEFENDANTS : 1. Sri. Nageshappa
S/o late Banoothi Rangaiah
aged about 78 years

2. Sri. Rangadhamaiah
S/o late Banoothi Rangaiah
aged about 76 years

Both are R/o Adavinagenahalli
Village, Suddekunte Post,
Kodigenahalli Hobli,
Madhugiri Taluk.

(By Sri D.V.S., Advocate)

I.A. No.VII

Applicants : Rangadhamaiah Defendants

Vs/-

Opponents : Ranganatha Plaintiffs

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ORDER ON I.A. NO.VII

When the matter posted for defendant evidence at this stage, the present application is filed by the defendants under order XXVI Rule 9 R/w, Sec-151 of CPC to appoint advocate as commissioner for local inspection of the suit property and to report the same in the interest of justice.

2. In support of this application the defendant No-2 filed his affidavit contended that plaintiff filed the suit against themselves for relief of permanent injunction in respect of



Sy.No.211. Further he contended that he has denied the right of Bandi dari particularly in the land bearing Sy.No.212 and 213 and they have also disputed the parikathu dated 26/08/1994 and said document is disputed. Further he contended that plaintiff evidence is already completed and they are disputed the bandi dari . now the plaintiffs are obtain the order of temporary injunction they are trying to form new road and in order proper adjudicate the matter to appointment of advocate commissioner to conduct local inspection is very much necessary and if the application is allowed no loss or hardship caused to the plaintiffs. Hence he prays to allow this application.

3. The plaintiffs' counsel filed objection to said application contended that the application filed by the defendants is not maintainable either in law or facts. Further he contended that plaintiffs are obtained the temporary injunction against the defendants and same was confirmed by the appellate court in M.A.No.9/2021. Further he contended that now the matter posted for defendant evidence at this stage the present application id filed with an intention to dragon the proceedings and appointment of commissioner is not require to adjudicate the matter. Hence he pray to reject the said application.

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



5. The following points arise for my consideration.

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

6. 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

7. **Point No.1:** The defendants have filed this application to appoint of advocate commissioner to inspect the suit property and submit his report. The present suit is filed by the plaintiffs against the defendants for relief of permanent injunction, the plaintiff led his evidence and matter posted for defendant evidence at this stage the information sought by the defendant is in the form of collection of evidence. In the guise of appointment of Court Commissioner, the defendants cannot gather evidence and go fishing for evidence the defendant not stated about the commissioner to conduct the local inspection of land bearing Sy.No.212 and 213 of their property. The appointment of court commissioner would arise only when there is an ambiguity in the evidence and when there is no convincing evidence on record. In the present suit now the stage is for defendant evidence. Hence, there is no necessity for



appointment of court commissioner to bring the information as sought in the said application.

8. The Hon'ble High Court of Karnataka in **W.P.NO. 104549/ 2014, by its order dated 9/6/2014, In Jagadish and another -Vs- Bhavani**, at para No. 7 it is held that,

Para 7.The trial yet to commence. At that stage, the petitioners and the respondent have filed I.A.No.2 and 6 praying to appoint Court Commissioner to make local inspection, to prepare the sketch and submit report. The trial court has rejected the applications on the ground the Court Commissioner can be appointed only after considering the evidence. The trial is yet to commence. The parties are yet to adduce evidence. Therefore, the trial court was justified in rejecting the applications. The impugned order does not call for interference.

9. The Hon'ble High Court of Karnataka in **W.P.No. 36836/2014, by its order dated 20/8/2014 in Sri. Channappa and another -Vs- Sri. Basavarajappa**, at para **No.3** it is held as follows,

Para.3. It is a matter of practice that it is for the parties to tender evidence and if after evidence is recorded, if the court opinion that it requires the assistance of a Court Commissioner to enable it to adjudicate the matter more effectively, it may appoint a Court Commissioner. It is the tenor of the provisions in this regard found in the Civil Procedure Code 1908. Therefore, the petitioners



even before tendering their evidence, seeking the appointment of a Court Commissioner, is out of place. There is no illegality committed by the court below in rejecting the application. The petitioners are however granted liberty to renew their prayer at an appropriate stage. The court shall then consider the same on its merit and pass appropriate orders.

The defendant has not adduced his evidence, if after adducing both sides evidence, if there is any ambiguity or necessity, the parties are at liberty to file proper application for appointment of court commissioner, but not at this stage. Hence, this court is of the considered opinion that the defendant No-2 has not made good ground for appointment of court commissioner at this stage. In view of the above discussion and decision I answer the point No.1 in the Negative.

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

ORDER

The I.A.No.VII filed by the defendant
No-2 under order XXVI Rule 9 R/w,
Sec-151 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 **14th day of March 2024**)

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