

**ORDERS ON I.A.NO.XI**

This order arises out of an application filed by the Plaintiffs under Order XVIII Rule 18 of CPC seeking the Court to inspect and to make the memorandum of the relevant facts and conditions of the suit property and to treat the same as part and parcel of the present suit.

**2.** The said application is accompanied with an affidavit sworn in by the plaintiff No.1 wherein he stated that plaintiff and defendants adduced their respective evidences and also produced the documents and prays to inspect the suit property and make the memorandum regarding the location of suit well and Nagarkatte . He further stated that he has already adduced his evidence and also produced documents regarding location of the suit well and the pumpset installed to the said well but the Court may at any stage visit the suit property to ascertain the material condition and since the dispute has arisen between the plaintiff and defendants in respect of well and Nagarkatte, the Court may inspect the suit property at any stage and the same would not cause any harm to the defendants. Hence prays to allow the said application.

**3.** Per contra, the said application is refuted by the Counsel for defendants by filing objections as not maintainable and stated that both the parties have already adduced their evidences before the Court and also arguments have been addressed by the

Counsels of both the parties, the said application came to be filed only to drag the matter. The Court at this juncture cannot presume the existence and location of suit well prior to 20 years and defendants have never denied the existence of suit well and Nagarkatte in their property and the plaintiff has to prove his case on his own strength but not through the application like this. It is further stated that the plaintiffs had filed an application seeking appointment of commissioner which came to be dismissed by this Court, after which preferred an appeal before the Hon'ble High Court which also came to be dismissed, hence at this juncture, the said application is not maintainable to inspect the suit property again. On all these grounds, prays to reject the said application with costs.

**4.** Heard both the sides. Perused materials on record.

**5.** The present suit has been filed by the plaintiffs seeking Easementary right to take water from the well situated in defendants property by way of necessity and prescription and right to perform pooja and consequential relief of permanent injunction against the defendants. Both the respective parties have already adduced their evidences in their best capacity and also main arguments came to be concluded by both the Counsels for plaintiffs and defendants. At this stage, the said application came to be filed on behalf of the plaintiffs for inspection of the suit property and to note down the relevant facts.

**6.** Before going further, it is essential to throw a light on Order XVIII Rule 18 for better understanding which is extracted here under -

**18. Power of Court to inspect.**

The Court may at any stage of a suit inspect any property or thing concerning which any question may arise and where the Court inspects any property or thing it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit.

**7.** A bare reading of the aforesaid provision goes to show that the power has been vested in the Court to make the inspection, if it deems fit. The said power can be exercised by the Court suo moto or even at the request made by the parties to a lis. The language envisaged in the said provision does not suggest that parties can claim spot inspection. The said provision is for the inspection by the Court as a matter of right and the Court is not bound under Order XVIII Rule 18 of CPC to make a local inspection even if both the parties request for the same, if it considers that such an application is not necessary. It is obvious that there must be some purpose for the Court making such inspection. The said purpose cannot be exercised in a cavalier manner.

**8.** Keeping in mind the object of the said provision, if we consider the matter on hand, admittedly, both the parties have led their evidence and also arguments came to be concluded. The said provision can be used by the Court for understanding the evidence led by the parties. Plaintiffs have claimed an easementary right of necessity and prescription to take water from the well and right to perform pooja of Nagarkatte situated at defendants property. On careful perusal of the entire materials on record, on hearing the arguments led on behalf of both the parties, there appears no ambiguity in the evidences led by the parties and the Court can effectively pass a decree based on the materials placed on record without resorting to the inspection of the property as claimed by the plaintiffs. There is a clear picture before the Court in respect of the dispute that has been arisen between the parties. The materials reveal that defendants have not at all denied the existence and location of suit well and Nagarkatte. The only centripodal issue which is required to be decided is whether the plaintiffs have got easementary right to take water from the suit well and whether they have got any right to perform the pooja. To decide the said issue, spot inspection by the Court is not necessary and the Court cannot get to know on such inspection that whether the plaintiffs have acquired any easementary right or not and the same has to be decided based on the evidences and sufficient evidence has already come on record based on which this Court can pass a decree. It is also to be noted that on perusal of ordersheet, it reveals that plaintiff had moved an application for appointment of commissioner

seeking for local inspection which came to be dismissed on the ground that the evidence adduced by the parties is sufficient to decide the case and there is no ambiguity in respect of location of well . The plaintiffs preferred an appeal before the High Court which also came to be dismissed and now after concluding the main arguments, the plaintiffs have moved the said application seeking for local inspection of the suit property again. On considering all these aspects, this Court is of the opinion that situation does not warrant for local inspection of the property and the same is liable to be dismissed. On all these grounds, this Court proceeds to pass the following -

**ORDER**

The application filed by the Plaintiffs under Order XVIII Rule 18 of CPC is hereby dismissed with the costs of Rs.300/-.

Since the arguments from both the sides came to be concluded, hence the case is reserved for judgment on 09-02-2024.

Sd/-

**Addl., Civil Judge Ankola.**