

ORDER ON I.A.NO.VII

1. This is an interlocutory application filed by the plaintiff under Order 26 Rule 9 read with Section 151 of CPC seeking appointment of court commissioner for the local investigation for present situation and identity residential house, shed and well in Sy.No.89/6, 89/1.

2. Along with the application, the plaintiff No.1 has filed affidavit wherein he contended that, he filed this application for investigate the present situation of house property, well in the suit property. If court commissioner is appointed for local inspection of the suit property the court will come to know present situation and past situation. It will helps the court for just disposal of the suit, No prejudice will be cause to the defendant. Hence, prayed for allowing the application.

3. On the other hand, defendants have filed detailed objection to the said application and contended that the application is contrary to law and not maintainable. The plaintiff claimed

easementary right of prescription and necessity against the defendants. The plaintiff has to prove his case by cogent documentary and oral evidence, he cannot seek commission for collection of evidence at this stage.

4. Further contended that when the location of well and Nagarkatte are admitted by both the parties, no question of appointment of commissioner arise. The plaintiff filed this application just to drag on the matter to harrss the defendants and he pray to dismiss the I.A.

5. Heard and perused the materials available on the record.

6. It is true that, when the case posted for the plaintiff's argument, the plaintiff No.1 has filed above application seeking appointment of the court commissioner to receive the report with respect to actual situation of the suit property and to know the location of the house property, well and Nagarkatte.

7. The plaintiff sought for declaration and permanent injunction against the defendants and seek declaration that the plaintiff have a right to perform pooja at the eastern side land Sy. No. 89/6 and also have right to use drinking water well situated in eastern side. Further, plaintiff has also sought for permanent injunction to restrained the defendants interfering the to perform pooja and by using drinking water.

8. On perusal of the prayer of the plaintiff, it discloses that, the suit is in the nature of declaration and permanent injunction, in this case whether the plaintiff having a right or not has to prove by leading oral documentary evidence. In support of his argument on this application the plaintiff counsel has relied a decision reported in 2019 (1) KCCR 394 on perusal of this decision, fact and circumstances of this case is totally deferent from present case on hand. In support of contention of the defendants the learned counsel has relied a decision reported in 2014 (4) KCCR 3920 on perusal of this decision the lordship has clearly explained the on what are the grounds court commissioner has to be appoint. The above decision the amptly applicable to the

present case on hand. The learned counsel for the defendant has relied one more decision reported in ILR 1996 KAR-1443 the principals of this decision is also applicable to the present case on hand. Hence, the present applicant has not made out reasonable and sufficient ground to appoint court commissioner. Hence, if court commissioner is appointed, it amounts to collection of evidence. Moreover, the evidence is completed and both the parties led their evidence. I am of the view that application is devoid no merits. Hence, I proceed to pass the following.

ORDER

I.A.No.VII filed under Order 26 Rule 9 read with Section 151 of CPC by plaintiff is hereby rejected.

No order as to costs.

For Arguments.

Call on 05-12-2019.

Addl. Civil Judge, Ankola.

