

KAUK310002022017



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND  
J.M.F.C., BHATKAL**

**Dated this 21<sup>st</sup> day of June 2022**

**PRESENT : SRI. FAWAZ P.A., B.A., LL.B.**

**Addl. Civil Judge and J.M.F.C., Bhatkal**

**O.S.No.22/2017**

**Plaintiff :**

Mohammed Ashraf Lowna,  
S/o Ali Saheb Lowna,  
Aged about : 67 years,  
R/o: N.H. 66, Nawayat Colony,  
Bhatkal.

**(By Sri. J. D. Bhat., Advocates)**

**V/s**

**Defendant :**

Abdul Sattar Shaik,  
S/o Gaffer Shaik  
Aged about : 47years,  
R/o: Hamza Nagar, Jali Road,  
Bhatkal.

**(By Sri. M. L. N, Advocate)**

**Parties to the I.A.No.VIII :**

**Opponent** : Mohammed Ashraf Lowna

V/s

**Applicant** : Abdul Sattar Shaik

**ORDERS ON I.A.NO.VIII FILED U/O.XXVI RULE 9  
R/W 151 OF C.P.C**

The Plaintiffs filed the suit for the relief of eviction and prayed before this court to direct the Defendant to pay arrears of rent.

**2. The nutshell of the Plaintiff's suit is that:-**

The Plaintiff filed a suit for eviction and also prayed before this court to pass a judgment and decree directing the Defendant to pay arrears of rent, as well as he claimed mesne profits. The Plaintiff submitted that the Defendant is a tenant in the suit schedule premises. The tenancy has been terminated on 20/08/2016 by issuing notice. The Defendant appeared before this court and filed a written statement denying the averments of the Plaintiff. The Defendant submitted that there is no any relationship of land lard and tenant, between the parties to the suit. The Defendant submitted that there is no any rents and security deposits paid by him to the Plaintiff

and also the Defendant had not executed any lease deed or agreement in favour of the Plaintiff on 07/01/2014. The agreement dated: 7/01/2014 relied upon by the Plaintiff is forged, fabricated and manipulated. The Defendant further submitted that the Plaintiff is not the owner of the suit alleged shop rooms door No. 8/1A and 81B of Nawayat Colony, presently Jali Pattana Panchayath, new door as No.375/A and 375B. The Defendant further submitted that the said shop rooms are located in plot No.223 of Sy.No.88, Venktapur Village. The suit shops rooms were constructed by this Defendant and also occupied by this Defendant as a absolute owner. The suit rooms are constructed in the Government land long back and the claim of the Plaintiff over the same in the Government land is untenable. Henceforth, the Defendant prayed to dismiss the suit.

**3.** The Defendant filed this application praying before this court to appoint a Court Commissioner, in order to visit the Sy.No.88 and demarket, shop premises under the occupation and find out the actual location, of the Government land Sy.No. 88(old) and 88/231(new) of Venktapur Village and also to note down the nature and feature of the building, their in the settled possession of the Defendant. The

Defendant further submitted that, the relationship between the Plaintiff and Defendant is disputed. The Defendant is in possession of shop situated in the Government land. The Plaintiff does not have any right title over the same. Thereby, the Defendant prayed to appoint a Court Commissioner to demarket the same and it may help this court to decide the matter.

**4.** The Plaintiff filed objections and denied the contentions of the Defendant. The Plaintiff submitted that there is no any necessity in this case to appoint a Survey Commissioner as a Court Commissioner. There is no any issue before the court regarding the identity of the properties or the suit buildings. The only issue before the court is, whether the Plaintiff's proved that, he is the owner of the suit schedule building and the Defendant is in the tenant of suit building. The application for appointment of Court Commissioner prior to the completion of the trial can not be entertained and the provision of law does not permit to appoint a Court Commissioner at this stage. He further submitted, that the Defendant had sought appointment of Court Commissioner in O.S No. 23/17, wherein the Defendant herein is representing his wife in O.S. No. 23/17. The Hon'ble High Court of

Karnataka has allowed the application and directed the trial court to appoint a Court Commissioner in the said suit. The Plaintiff further submitted that the motive behind this application is only to collect evidence. The Defendant has not produced a single document to explain the suit schedule property building was constructed by him, or situated in the Government land. In such circumstances, the Plaintiff prayed to dismiss the application.

**5.** The counsel for the Defendant relied upon the judgment in Writ Petition No.114826/2019 (Gm. C.P.C).

**6.** Heard both the sides. Following points arise for my consideration;

**Point No.1** : Whether the Defendants have made out grounds to allow this application?

**Point No.2** : What Order?

**7.** My findings on the above points are as follows;

Point No.1 : **In the Negative**

Point No.4 : **As per final Order,**

**for the following:-**

## **REASONS**

**8. Point No. 1 :** The Plaintiff filed the suit for the relief of eviction and prayed before this court to direct the Defendant to pay arrears of rent. The Plaintiff submitted that the Defendant is the tenant of the suit schedule shop. The Plaintiff has terminated the tenancy in due process of law. The Defendant is in arrear of payment of rent. Henceforth, the Plaintiff prayed to dismiss the suit. The Defendant filed, written statement denying the relationship between the Plaintiff and Defendant. The Defendant further submitted that the suit schedule shop is situated in Government land and the suit schedule building has been constructed by the Defendant himself. Henceforth, the Plaintiff does not have any right to file this suit. Thereby, the Defendant prayed to dismiss the suit.

**9.** The Defendant filed this application, praying before this court to allow him to identify the suit schedule property through a Court Commissioner. The Defendant submitted that the relationship between the Plaintiff and Defendant is in dispute. Similarly, there is a contentions raised by the Defendant, pertaining to the existence of suit schedule premises. Henceforth,

the Court Commissioner will assist the court to come to a conclusion if his report is obtained. The Plaintiff filed a objections denying the averments of the Defendant. The Plaintiff submitted that appointment of the Court Commissioner will not suffice circumstance of the case. It will be mere collection of evidence which is barred by the law in force. Henceforth, prayed to dismiss the application.

**10.** The suit of the Plaintiff is for eviction. It is to be noticed that the issues framed by this court casted burden upon the Plaintiff. The Defendant has admitted his possession in suit shop premises. Whereas the contentions of the Defendant pertaining to the relationship between the Plaintiff is disputed. The stand of the Defendant is that, he is the absolute owner of the suit schedule premises and said shop was constructed by him in the Government land.

**11.** It is to be noticed that there is no any counterclaim nor any cross suit, filed by the Defendant claiming title over the suit schedule premises. However the contentions of the Defendant is that said suit premises is situated in the Government land. The Plaintiff argued that there is no any peace of paper shown by or plead by them, till this minute. Because

there is no any burden casted upon the Defendant to prove such title nor possession over a Government land. As the Defendant did not plead nor claim anything pertaining to the title other than the denial over the lease agreement, by the identification of the property for proving his case does not arise in this suit. However, this suit is one for eviction not for injunction or recovery of possession.

**12.** At the time of arguments by the Defendant, the Defendant counsel relied upon a Writ Petition No.1148/2019, where in the Hon'ble High Court of Karnataka held that, the suit where location of the property is in dispute, it is necessary that a Court Commissioner has to be appointed for the purpose of legal inspection.

**13.** It is to be noticed that the suit is one for eviction. The title of the Plaintiff over the suit schedule property has to be proved and it has to be established by the Plaintiff himself. Whereas, as in the suit for injunction or possession, when the title and possession is in dispute, appointment of the Court Commissioner is necessary. In this suit the Defendant has raised a contentions saying that the suit schedule property is constructed in Government land. But he has not

prayed any title over the same nor he has filed any other suit against the Government till today. Henceforth, I find that the application filed by the Defendant will not suffice the circumstance of this suit. Henceforth, I answer **Point No.1 Negatively.**

**14. Point No.2:-** In view of answering above Point No.1 Negatively, I proceed to pass following:-

**ORDER**

**The application filed by the Defendant  
U/Order XXVI Rule 9 of C.P.C as I.A. No.8 is  
here by dismissed.**

**No order as to cost.**

**Sd/-**

Addl. Civil Judge and  
J.M.F.C. Bhatkal.

