

ORDER ON IA No. II filed U/O. 26 Rule 9 of CPC.

The appellant being the defendant has filed the present IA U/O. 26 Rule 9 R/W Sec. 151 of CPC seeking appointment of the court commissioner to ascertain the building existing in the suit schedule property. The respondent the plaintiff has failed to file any objection to IA No.II.

Heard both sides.

The plaintiff in OS No. 51/2014 on the file of the Hon'ble Prl. Civil Judge, Bhatkal has filed the suit seeking eviction and damages against the defendant contending that he is the owner of the vacant land the suit schedule property Sy. No. 540A/2 of Susgadi village, Bhatkal Taluk. He has contended on 18-01-2012 he was given the suit schedule property the vacant land measuring 18" x 88" to the defendant on lease and later he issued the notice terminating the tenancy ending Nov. 2013. The defendant has taken the contention that first the suit schedule property was given on lease but later the suit schedule property the vacant land was given to him on irrevocable permanent license permitting him to put up permanent structure in the suit schedule property and accordingly, he put up the permanent structure but now the plaintiff suppressing the existence of the permanent structure has filed the suit seeking eviction. The appellant has contended on 01-07-2017 he had filed IA No. VIII U/O. 26 Rule 9 of the CPC before the trial court but the same was not

considered. The trial court on submission of both sides has kept IA No. VIII in abeyance till completion of the evidence and the liberty was given to the present appellant to press the said IA if it was necessary. The appellant has not pressed the IA and the trial court after completion of the trial pleased to pass the judgment. The appellant has contended that to prove the existence of the permanent structure is very important. They have contended without seeking demolition of the existing structure mere suit filed seeking eviction is not maintainable. The defendant has not disputed the title of the plaintiff. So, when the title is not in dispute the existence or not existence of the permanent structure in the suit schedule property cannot make any difference and that cannot fail the suit filed seeking eviction. Therefore, I am of the opinion that the IA filed herein that too without seeking permission U/O. 41 Rule 27 of the CPC is deserves to be dismissed. Accordingly, I proceed to pass the following:

ORDER

IA No. II filed by the appellant U/O. 26
Rule 9 R/W 151 of the CPC is hereby dismissed.
For arugment on merit.

Senior Civil Judge, Bhatkal