

KAUK510003402019



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

At the stage of further cross examination of PW2, the present application is filed by the defendants under Order 26 Rule 9 R/w Section 151 of CPC for appointment of Court Commissioner for local investigation of the suit schedule property.

2. In the affidavit filed by the defendant No.1 in support of instant application, it is stated that, the defendants have filed the present suit in respect of property No.137 situated at Ward No.II of Dusagi Village of Haliyal Taluka to identify the boundaries of the said property and for haddu bast of the same. The plaintiffs and the defendants are having separate possession of their respective properties and to fix the haddu bast boundaries of the properties, it is just and proper to appoint Taluka Surveyor as Court Commissioner which would reveal as to who are in possession of the properties. With these contentions, the defendants pray to allow the application.

3. On the other hand, the plaintiffs have filed objections to the instant application wherein, they have contended that, towards eastern side of the suit property, the joint family property of the defendants bearing Dusagi Village Assessment No.137 is situated and the

same is standing in the name of defendant No.1, his late brother Sri. Mavalu, their mother Smt. Yellawwa and other joint family members but the defendants are denying the said fact intentionally. It is also contended that, construction work of two RCC buildings in property No.137 and 136 have already been completed by the defendants without following the due process of law. The defendants have given false boundaries of their property in their written statement which was filed after two years of filing of the present suit. In fact, the suit property of the plaintiffs bearing No.26 and the joint family property of the defendants bearing No.137 are adjoining to each other.

4. It is further contended in the objections that, suit property herein is one of the subject matter in FDP No.5/2019 wherein, the Court Commissioner has already given his report and as such, if this Court orders for appointment of Court Commissioner, the same commissioner who was appointed in FDP No.5/2019 to be appointed in this suit also to avoid conflicting reports. Otherwise, the report submitted in FDP No.5/2019 could be referred in the present suit by the Court Commissioner if appointed in this suit by the Court.

5. It is further contended in the objections that, if Court Commissioner is appointed in the present suit, he is required to inspect not only the suit property but also the surrounding properties of the suit property which have been stated in the plaint schedule and the said commission work has to be executed with the assistance of PDO of the concerned village

as he is the record keeper of the properties situated in the Dusagi Village.

6. Heard on both side. Perused entire materials.

7. Having heard and perusal of the records, the following points arise for the consideration of the Court:

**POINT NO.1:** Whether the defendants have made out good grounds to allow the present application?

**POINT NO.2:** What order?

8. Answers of the Court to the above points are as under:

**POINT NO.1:** In the Affirmative.

**POINT NO.2:** As per final order for the following:

### **REASONS**

9. **POINT NO.1:** The present suit is filed by the plaintiffs for the relief of permanent injunction in respect of suit property bearing No.26 situated in Dusagi Village of Haliyal Taluka. According to the plaintiffs, the property of the defendants bearing No.137 is situated towards eastern side of the suit property. However, the same is denied by the defendants. According to the defendants, their property bearing No.137 is not at all situated in any side of the suit property. Hence, on going through the pleadings of both parties, it could be gathered that, there is serious dispute regarding location of the suit property and the location of the property of the defendants.

10. Though the present suit is for the relief of permanent injunction and though

the initial burden is on the plaintiffs to prove the possession over the suit property but if entire contents of objections to the present application is perused, it could be gathered that, the plaintiffs have not objected for appointment of Court Commissioner. The main contention of the plaintiffs is that, if this Court appoints the Court Commissioner, he shall measure not only the suit property but all properties which are surrounded by the suit property and PDO of the concerned gram panchayath shall assist the Court commissioner in executing his work. Having regard to the same and having regard to serious dispute in respect of location of the properties, Court opines that, it is a fit case to appoint Court Commissioner which would facilitate the Court to come to a right conclusion.

11. The *Hon'ble High Court of Karnataka* in the case of *Shadaksharappa S/o Veranna V/s Kumari. Vijayalaxmi D/o Pampanna and Others (W.P.NO.201274/2022 (GM-CPC) dated 24-01-2023)* held that, in a suit for an injunction, Court Commissioner could be appointed and the appointment of Court Commissioner could be sought by the parties even before completion of evidence. In the present case, having regard to the facts of the case, Court opines that, appointment of Court Commissioner would not amounts to collection of evidence but the report of the commissioner would assist this Court to come to a right decision in respect of nature of the properties of both parties. Hence, present application is deserves to be allowed. As such, Point No.1 is answered in the **AFFIRMATIVE**.

**12. POINT NO.2:** In view of aforesaid reasons, Court proceeds to pass the following:

**ORDER**

I.A No.XI filed by the defendants under Order 26 Rule 9 R/w Section 151 of CPC is hereby allowed.

Consequently, the Taluka Surveyor, Haliyal is hereby appointed as Court Commissioner to measure the suit property and also the property of the defendants and he shall submit his report.

The Court Commissioner shall take the assistance of concerned PDO for execution of commission work.

The Court Commission shall issue prior notice to both side parties through RPAD and he shall submit postal acknowledgments along with his report.

Both parties are directed to submit their memo of instructions in the office well in time i.e., within one week from this day.

The Court Commissioner shall measure the properties of plaintiff and defendants and he shall submit a detailed report with regard to nature of the properties, location of the properties, existence of boundaries marks of the properties etc.

Fees of Court Commissioner is tentatively fixed at Rs.2,500/- which is payable by the defendants.

Office is directed to issue commission warrant if P.F, necessary documents are furnished and fees of commissioner is deposited.

No order as to costs.

Call on for report by 19.12.2024.

**Civil Judge & JMFC.,  
Haliyal**