

KAUK620002172020



**IN THE COURT OF PRINCIPAL C.J & J.M.F.C
AT: HONNAVAR**

**Present: Sri Chandrashekhar.E. Banakar.
(B.A., L.L.B., L.L.M.,)
Principal Civil Judge & JMFC
Honnavar**

Dated this the 13th day of January, 2023

O.S. No.11/2020

Plaintiffs:

- 01. Salvador Duming Rodrigues,**
Aged about 55 years,
Occupation: Agriculturist & a Coolie,
R/o. Kelaginoor, Tq: Honnavar (U.k).
- 02. Smt.Victoria W/o Salvador Rodrigues,**
Aged about 51years,
Occupation: Agriculturist & a Household,
R/o. Kelaginoor, Tq: Honnavar (U.k).
- 03. Lawrence @ Noorence Duming Rodrigues,**
Aged about 55 years,
Occupation: Agriculturist & a Coolie,
R/o. Kelaginoor, Tq: Honnavar (U.k).
- 04. Fancies Duming Rodrigues,**
Aged about 51 years,
Occupation: Agriculturist & a Coolie,
R/o. Kelaginoor, Tq: Honnavar (U.k).

(By Advocate Sri.MIH)

//Vs//

Defendant:

Pedrik Pursu Rodrigues,

Aged about 54 years,

Occupation: Agriculturist & a Fishing,

R/o Kelaginoor, Tq: Honnavar (U.K).

(By Advocate Sri.SSB)

Parties to I.A. No.VI:

Applicants:

01. Salvador Duming Rodrigues,

Aged about 55 years,

Occupation: Agriculturist & a Coolie,

R/o. Kelaginoor, Tq: Honnavar (U.k).

02. Smt.Victoria W/o Salvador Rodrigues,

Aged about 51years,

Occupation: Agriculturist & a Household,

R/o. Kelaginoor, Tq: Honnavar (U.k).

03. Lawrence @ Noorence Duming Rodrigues,

Aged about 55 years,

Occupation: Agriculturist & a Coolie,

R/o. Kelaginoor, Tq: Honnavar (U.k).

04. Fancies Duming Rodrigues,

Aged about 51 years,

Occupation: Agriculturist & a Coolie,

R/o. Kelaginoor, Tq: Honnavar (U.k)

//Vs//

Opponent:

Pedrik Pursu Rodrigues,

Aged about 54 years,

Occupation: Agriculturist & a Fishing,

R/o Kelaginoor, Tq: Honnavar (U.K).

ORDERS ON I.A. NO. VI

The applicant/plaintiff No.2 has filed this application under Order XXVI Rule 9 read with section 151 of CPC seeking for the appointment advocate as Court Commissioner along with the assistance of surveyor to perform works mentioned in the application.

2. The application is annexed with the affidavit of the plaintiff No.2, wherein she deposed that the nature and situation existing over the suit schedule properties, it is very much necessary to appoint Court commissioner in this case. About these aspect, it is not possible to adduce evidence before the Court. Therefore, for proper adjudication of the suit, it is very much necessary to appoint any advocate as Court commissioner with the assistance of surveyor. Hence, she filed this application.

3. The defendant has filed his objection, by contending that the application filed by the plaintiff No.2 is not maintainable. By filing this application, the plaintiff wants to collect evidence through Court commissioner. Hence, he prayed to dismiss the application.

4. I have heard the learned advocate for the plaintiffs and the learned advocate for the defendant and I have perused the records.

5. The point that arises for my consideration:

1. Whether the applicant made out sufficient grounds for appointment of Commissioner to visit the suit schedule properties as sought for?
2. What order?

6. My answer to the above points are as follows:

Point No.1: in the **affirmative**.

Point No.2: as per final order, for the following:

REASONS

7. Point No.1:- The plaintiffs have filed this suit against the defendant for the relief of partition, declaration and permanent injunction.

8. On perusal of the pleading in the plaint, written statement, application and objection to the application, it appears that without surveying the schedule properties, it is not possible to demonstrate the case before the Court. In this case, it is necessary to get the report of the Court commissioner on the works mentioned in the application. Without the assistance of the report of the Court commissioner, this Court cannot decide the suit in proper manner. Therefore, for the above said reasons the plaintiff No.2 has made out grounds to allow the application. Hence, I answered point No. 1 in the **affirmative**.

9. Point No.2:- In view of findings on point No. 1, I proceed to pass the following:

ORDER

I.A. No. VI filed by the applicant/plaintiff No.2 under Order XXVI Rule 9 read with section 151 of CPC is hereby allowed.

Sri.G.S.H, advocate is appointed as Court commissioner.

ADLR, Honnavar is hereby directed to assist the Court commissioner.

Rs. 3.000/- is hereby fixed as Commissioner fee to the Court commissioner and Rs.2,000/- is fixed for surveyor.

Plaintiffs are hereby directed to deposit the commissioner fee and the plaintiffs and defendant are directed to file memo of instructions.

Office is hereby directed to issue commissioner warrant after fixed fee deposited by the plaintiff.

Issue intimation to the Court
commissioner and ADLR, Honnavar.

(Typed by me in my laptop, corrected and signed by me
and then pronounced in the open Court on this 13th day of
January, 2023).