

KAUK620005732023



**IN THE COURT OF PRL CIVIL JUDGE & J.M.F.C  
AT: HONNAVAR**

**Present: Chandrashekhar E Banakar, B.A.LL.B.LL.M,  
Principal Civil Judge and JMFC, Honnavar**

**Dated this the 28<sup>th</sup> day of July, 2024**

**O.S. No.43/2023**

**Plaintiff:**

**Smt. Suneeta W/o Manjunath Naik.**

Age: 50 years, Occ:Agriculture&Household,  
R/o. Honnavar Kasaba Paiki Madivala  
Halla Road, Tq: Honnavar, U.K.,

**//Vs//**

**Defendants:**

**01. Smt. Surekha W/o Ishwar Naik,**

Age: 58 years, Occ:Agriculture&Household,  
R/o. 43 Divya Nilaya Abbigere, Main  
Road, Kammagondanahalli, Post:  
Jalahalli, Weste, Bengaluru Uttara  
Karnataka State.,

**02. Manjunath Timmanna Naik,**

Age: 65 years, Occ: Agriculture&Household,  
R/o. Honnavar, Kasaba Paiki, Rayalkeri,  
Tq: Honnavar, U.K.,

**03. Smt. Sujata Baburav Hosapattan,**

Age: 55 years, Occ: Agriculture&Household,  
R/o. Honnavar Kasaba Paiki Bandar Road,  
Tq: Honnavar, U.K.,

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

**Applicant/plaintiff:**

**Smt. Suneeta W/o Manjunath Naik.**

Age: 50 years, Occ:Agriculture&Household,  
R/o. Honnavar Kasaba Paiki Madivala  
Halla Road, Tq: Honnavar, U.K.,

**(By Advocate. Sri. MIH).**

**//Vs//**

**Opponents/defendants:**

**01. Smt. Surekha W/o Ishwar Naik,**

Age: 58 years, Occ:Agriculture&Household,  
R/o. 43 Divya Nilaya Abbigere, Main  
Road, Kammagondanahalli, Post:  
Jalahalli, Weste, Bengaluru Uttara  
Karnataka State.,

**02. Manjunath Timmanna Naik,**

Age: 65 years, Occ: Agriculture&Household,  
R/o. Honnavar, Kasaba Paiki, Rayalkeri,  
Tq: Honnavar, U.K.,

**03. Smt. Sujata Baburav Hosapattan,**

Age: 55 years, Occ: Agriculture&Household,  
R/o. Honnavar Kasaba Paiki Bandar Road,  
Tq: Honnavar, U.K.,

**(By D-1&2 Sri.MLN&D-3 KVN Advs,)**

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

The applicant/plaintiff has filed an application under Order XXVI Rule 9 read with section 151 of CPC for the appointment any advocate as Court Commissioner visit the schedule property to perform works mentioned in the application.

2. The plaintiff has sworn to an affidavit annexed to the application and contended that she had filed this suit seeking for the relief of declaration based on easement right. In order to know and in order to bring the exact situation of the suit schedule property, it is very much necessary to appoint Court commissioner. These aspects can be brought before the Court only by way of report of the Court commissioner and any quantum of evidence will not prove those aspects before the Court. If this application is not allowed, then it will cause irreparable injuries to her and on the other hand, if this application is

allowed, then no prejudice will be caused to the other side. Hence, she filed this application and sought for appointment of Court commissioner.

3. On the contrary, the learned advocate for the defendant No.1 filed her objection and contended that the application is not maintainable. Further he contended that this application is filed only with an intention to collect evidence through Court commissioner. Further it is contended that at this point of time, appointing Court commissioner is not necessary and the parties can seek for appointment of Court commissioner after completion of evidences. This application is filed only with an intention to harass the defendants. Hence, he prayed to dismiss the application.

4. I have heard the learned advocates for the plaintiff and defendants and I have perused the records.

5. The point that arises for my consideration:

1. Whether the applicant has made out sufficient grounds for appointment of Commissioner to visit the suit schedule property 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,

**REASONS**

7. **Point No.1:-** Under this application, the plaintiff is seeking for the appointment of Court commissioner to

visit the suit schedule property and to to perform works mentioned in the memo.

8. At this point of time, it is necessary to cite the following judgment. In Annappa Mestha Vs Mutayya Achari reported in ILR 2002 Kar 3599, wherein the Hon'ble High Court of Karnataka has held that,

**"8. The need to have resort to Order 26, Rule 9 ought to be felt by the Court for purpose of elucidating certain details which, in its opinion, can neither be had from the records and nor can be produced by the parties by way of oral and documentary evidence. The details so required by the Court ought to be such that in their absence determination of issues in dispute cannot be effectively adjudicated upon necessitating the appointment of Commissioner on its own or at the instance of either of the parties. Where the Court is of the opinion that the matters in dispute could be effectively adjudicated upon by having resort to the evidence available on record, the Court at its discretion can refuse to direct appointment of Commissioner. In the case on hand the Court-below on more than one occasion referred to the sufficiency of evidence on record for deciding the rival claims of the parties. When the Court itself is of the view that elucidation of any matter is not required for purpose of deciding the case, the order passed by it rejecting the I.A. XI filed for appointment of Commissioner cannot be found fault with. In the view that I have taken, I find that the Court below has not exercised its jurisdiction illegally or with material irregularity calling for interference at the hands of this Court."**

9. I have perused the above decision. As held by the Hon'ble High Court of Karnataka, when there are pleadings and documents in the suit, there is absolutely no scope for the Court to allow the commission application. Now in this case, it is necessary to know whether the alleged easement and to know about the existence of road. For that, appointment of Court commissioner is very much necessary. Without the assistance of the report of the Court commissioner, this Court cannot presume about the existence of the situation as alleged and contended by the plaintiff. Therefore, for the above said reasons the plaintiff has made out grounds to allow the application. Hence, I answered point No. 1 in the affirmative.

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

**ORDER**

I.A. No. I filed by the applicant/plaintiff under Order XXVI Rule 9 of CPC is hereby allowed.

To nominate the Court commissioner,  
Call on 08/08/2024.

(Typed by me in my laptop, corrected and signed by me and then pronounced in the open Court on this 28<sup>th</sup> day of July, 2024).

**Principal Civil Judge & J.M.F.C.  
Honnavar.**

**Order ON IA No.I**

**OS No.43/2023**