

IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C, AT HONAVAR

Dated on this the 4th day of March, 2021

Original Suit No.96/2020

PRESENT: SMT. SANMATHI S.R.

BA.L.,LLM.,

Prl. Civil Judge & J.M.F.C, Honnavar

Plaintiff: Ramachandra Subray Bhat

(By Sri.G.P.H., Advocate)

//Vs.//

Defendants: 1.Annayya Vasudev Yaji and another

(By Sri.M.S.B.,Advocate)

IA.NO.V

Applicant: Ramachandra Subray Bhat,

//Vs.//

Respondents: 1.Annayya Vasudev Yaji and another

ORDERSON IA NO.V

Counsel for the plaintiff filed this application U/O 26 Rule 9of CPC seeking appointment of ADLR, Honavar to conduct survey of the suit schedule properties and to mention the points stated in the application.

2. In the accompanying affidavit, it is stated that the defendants are not having any right in the suit schedule properties. But, have encroached some portions of suit schedule properties and constructing toilet. Hence, filed this suit seeking Permanent Injunction against the defendants to restrain them from encroaching suit schedule properties to construct toilet in it. It is stated that it is necessary to appoint the Commissioner to note down the points which are stated in the application in order to know about the encroachment of suit schedule properties by the defendants. Hence, filed this application.

3. On the other hand, defendants filed objections to the application. In their objections, they have admitted that they are the adjacent owners of the land. But, denied that they have encroached suit schedule properties and constructing toilet. It is stated that the boundaries of the plaintiff's land and defendants land are demarcated separately and are having separate boundary marks. In the objection, they have given points for consideration in case the Court comes to the conclusion for appointment of Commissioner. Whereas, defendants objected to note down point No.2 stated in the application i.e., with respect to joint survey. Further, defendants filed memo stating that they are constructing house and toilet in their Sy.No.347 Hissa 7 to the extent of 10 guntas and if there is any encroachment, then they are ready to vacate the encroached portion, if the same is proved after survey.

4. Heard arguments on both side.

5. The point that arise for my consideration is as follows:-

1. Whether the plaintiff has made out sufficient grounds to allow IA No.V?
2. What order?

6. My answer to the above point is in the **Affirmative** for the following:-

REASONS

7. Point No.1:- Plaintiff has filed this suit against the defendants seeking permanent injunction to prevent them from encroaching suit schedule properties to construct building or toilet in the suit schedule properties. It is his specific assertion that the defendants have encroached some portions of suit schedule properties and constructing toilet. Whereas, defendants denied the allegation of encroachment of suit schedule properties by them. It is stated by the defendants that they are constructing house and toilet in their Sy.No.347 Hissa 7 and they have not encroached any portions of suit schedule properties. With respect to the present application defendants in their objections stated that they have no objection for appointment of ADLR, Honavar as Court Commissioner for the purpose of survey of suit schedule properties. But, they have objection regarding point No.2 mentioned in the application i.e., with respect to joint survey.

8. On perusal of entire materials on record, one thing is more clear that the plaintiff has made this suit stating that the defendants have encroached some portions of suit schedule properties and constructing toilet in it. Whereas, defendants denied the same. At this stage, if the ADLR, Honavar is appointed to conduct survey of

the suit schedule properties, it will help the Court to know whether there is any encroachment by the defendants as stated by the plaintiff or not. Moreover, defendants have filed memo stating that they are ready to remove the encroachment if the encroachment is proved after survey. As such, if the ADLR, Honavar is appointed at this stage, it will become easier to the Court to determine about encroachment as stated by the plaintiff. Therefore, I am of the clear opinion that no injustice will be caused to either parties if ADLR, Honavar is appointed as Court Commissioner to conduct survey. Hence, **Point No.1 answered in the Affirmative.**

9. Point No.2: In view of my answer to point No.1 in the Affirmative, I proceed to pass following:-

ORDER

IA No.V filed by the plaintiff U/o.26 Rule 9 of CPC is hereby allowed.

The ADLR, Honavar is appointed as Court Commissioner to conduct survey of suit schedule properties and note down the points stated in the application except point No.2 stated in the application.

The Commissioner- ADLR shall also note down the points stated by the defendants in their objections.

Commissioner fee of Rs.2,500/- is fixed.

Issue commissioner warrant along with
the copy of I.A. and copy of objection, if PF
paid.

(Dictated to the Stenographer directly on computer, computerized by her,
corrected by me and then pronounced in the open Court on this 4th day of March,
2021)

Sd/-

(SMT. SANMATHI S.R.)
C/c Addl.C.J. & JMFC., Honnavar.