

17.8.2022

ORDERS ON I A NO VII

Defendant no 1 filed I A No VII under Order XIII rule 10 R/w S 151 of CPC seeking for issue of summons to ADLR, Kumta to furnish the documents as sought in the application. In the affidavit filed in support of the application, it is stated that the surveyor came to the properties in order to conduct survey of and it is noticed that there is difference in survey map pertaining to the properties. At that time statement is given

before the surveyor agreeing to make representation before the concerned authority to cancel the survey map pertaining to Sy No 634/4 and conduct a fresh survey of the properties. The said statement is signed by Chetan Janardhan Fayide as well as plaintiff no 1. In order to substantiate said aspects, it is just and necessary to summon for the records pertaining to the proceedings before ADLR. Based on the said grounds, defendant no 1 sought to allow the application.

Counsel for plaintiffs filed objection to the application wherein it is contended that the application filed by defendant no 1 is not tenable and liable to be dismissed. It is contended that the properties related to which difference in survey map is stated, does not relate to the property involved in the suit. The survey numbers pertaining to which wrong entry in the survey map is stated is not related to the property in question in the present suit. The documents which defendant no 1 intend to summon could be furnished by obtaining the certified copies of the documents rather than seeking for issue of summons. Defendant no 1 filed the present application to delay the proceedings. Based on the said grounds, plaintiffs sought for dismissal of application.

Heard counsel for defendant no 1 and plaintiffs. Perused the materials on record.

The plaintiffs filed present suit seeking the relief of declaration and permanent

injunction. Defendant no 1 contended that the documents intended to be summoned are material to substantiate the contention of defendant no 1. It is contended that there is difference in survey map and statement is given by plaintiff no 1 before surveyor in that regard. Defendant no 1 furnished the certified copy of the documents. It is specifically contended that plaintiff no 1 affixed signature to the said document. In order to verify and establish the said aspect, summoning of the documents appear just and necessary. The signature stated to be that of plaintiff no 1 in the document needs to be ascertained for which summoning of documents appear just and necessary. Plaintiffs contended that the survey numbers pertaining to which the documents are intended to be summoned are not related to the suit property and as such, not material to the case on hand. The documents sought to be summoned are related to the suit property or not cannot be adjudicated at this juncture. The said aspect can be ascertained only if the documents are furnished before the court. The documents sought to be summoned appear to be material to the case on hand. Defendant no 1 needs to be accorded opportunity to substantiate his contentions. The contentions raised by plaintiffs do not sustain for consideration. The summoning of documents as sought in the application appear just and necessary for proper adjudication of the dispute. On

consideration of the said aspects, this court deems it appropriate to pass the following

ORDER

I A filed by defendant no 1 under Order XIII rule 10 R/w S 151 of CPC is hereby allowed.

Sd/-

Pri. Civil Judge, Kumta.