

KAUK710022702018



**IN THE COURT OF THE PRL. CIVIL JUDGE AND
J.M.F.C., KUMTA, AT : KUMTA.**

Dated this the 30th day of October, 2024

PRESENT:

PRESENT : Smt Joyline Mendonca, B.A. LLB..
Prl. Civil Judge and J.M.F.C. Kumta

ORIGINAL SUIT.No.123/2018

Plaintiffs: Ramesh Govind Hosmane and others

/ VS /

Defendants: Prakash Dayanand Pandith and others

IN I.A.No.VII

Applicants: Suryanarayana Dayanand Pandith
and others

/ VS /

Opponents: Ramesh Govind Hosmane and others

ORDERS ON I.A. NoVII

The defendant has filed the instant application under Section 75 and Under Order XXVI Rule 9 of CPC, seeking appointment of Court Commissioner for local inspection of the suit schedule property.

2. The Defendant has sworn affidavit in support of application and stated that plaintiff has filed suit for the relief of Permanent injunction against the defendant for not conducting a survey and not demarcating Survey No.82/4 of Bargi village. Hence for the proper adjudication of the matter involved in question it is necessary to appoint Court Commissioner for local inspection of his property.

3. The Plaintiff has filed detailed objections to I.A.No.VII and denied the averments of application and affidavit sworn in support of application. Plaintiff contend that there is no necessity to order for appointment of Court Commissioner. Further he stated that the application filed by plaintiff is not maintainable in law and facts and the same is liable to be dismissed. The plaintiff has not made out sufficient grounds to allow the application for appointment of Court Commissioner. The defendant has not shown reason for local inspection of suit property. In fact there is no ground made out in the application. There is no bonafide in application. Further he contend that the suit is one for injunction restrain the defendant from causing disturbance in the peaceful possession and enjoyment of suit property. Plaintiff contention is that they are not seeking injunction to restrain the defendant from conducting Survey of Sy.No.84/4. Further stated that

defendant in his written statement has not taken contention of encroachment by Plaintiffs. Hence the application is not maintainable in law and facts. Hence prayed for rejection of the application.

4. Heard both sides on I.A.No.VII. Perused the materials on record.

5. The following points arise for determination of this Court:-

1. Whether the application filed by the defendant seeking appointment of Court Commissioner deserves to be allowed?

2. What order?

6. This Court has answer to the above said points is as follows.

Point No.1 : In Negative.

Point No.2 : As per the final order for the following:-

REASONS

7. **Point No. 1:** The Plaintiff has filed this suit for the relief of Permanent injunction . It is the case of the plaintiff that he is in possession of the suit schedule property. The defendant contention is that plaintiffs are raising objection when defendant are conducting Survey of Sy.No.84/4 of Bargi village. Hence for the proper adjudication of the

matter involved in question it is necessary to appoint Court Commissioner for local inspection of his property.

8. The suit being for the relief of permanent injunction seeking to restrain the defendant from pulling down the compound wall existing in the eastern and southern side of the suit schedule property bearing survey No.82/3 and Sy.No86/6 of Bargi village. The contention of the defendant is that he is the owner of Sy.No.82/4 which is situated to the eastern side of Sy.No.82/3 and northern side of Sy.No.86/6. The defendant can not take benefit of process of Court to prove his case. It is the duty of the defendant to prove his case on his own strength. The commissioner's report now sought by the defendant is irrelevant and the applicant cannot prove anything by the commissioner's report. In this case if the contentions of the applicant are genuine, report of commissioner is not at all necessary as they cannot prove their case through the report of the commissioner. By filing the application, the applicant is planning to protract the trial of the above suit as he has found that appointment of the commissioner is an impediment for speedy disposal of the suit.

9. It is evident from the documents and pleadings on record that the defendant intends to get his property measured by the survey authorities. For the purpose of conduct the survey it is not necessary to obtain separate permission from this Court.

The defendant has not shown satisfactory reason for local inspection of suit property. The defendant has not made out sufficient grounds to allow the application for appointment of Court Commissioner. Further it appears that the defendant intends to collect evidence through Court Commissioner. Further the evidence produced by the Court Commissioner is collection of the evidence and not conclusive proof. Further, the present suit is permanent injunction and the parties to the suit must be established their relief or defence by placing proper and cogent evidence independently. Hence the application is not maintainable in law and facts. Hence for all these reasons, this Court answer point No.1 in Negative.

10. Point No. 2: For the reasons discussed above, this Court proceed to pass the following

ORDER

The I.A. No.VII filed by the defendant under Section 75 and under Order 26 Rule 9 of Code of Civil Procedure is hereby rejected.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by him, corrected, signed and then pronounced by me in the open court, on this the **30th day of October, 2024**)

(Smt.Joyline Mendonca)
Prl.Civil Judge and JMFC.,
Kumta.

(Order pronounced in open court
vide separate order)

-: O R D E R :-

**IA No.V filed by plaintiff under
Order 39 Rule 1 and 2 R/w Section
151 of CPC is hereby allowed.**

**The defendants or their agents
or anybody on their behalf are
hereby restrained by an order of Ad
interim temporary injunction from
alienating and mortgaging the suit
schedule property or creating charge
over the same, till further orders.**

No order as to cost.

Prl. Civil Judge, Kumta