

IN THE COURT OF THE CIVIL JUDGE, SIDDAPUR.**PRESENT****SRI. Thimmaiah G.****B.A. LL.B.,****Civil Judge, Siddapur.****:: O.S.NO.04/2019 ::****DATED THIS 08th DAY OF September 2022.**

Plaintiffs/Opponents: Gange W/o Dyava Naik
A/a:80 years, Agriculture/ House wife
R/at: Haveenabeelu,Haveenabeelu
village, Siddapur LR.s 1(A) Manjunath
Dyava Naik and others
(1(A) to 1(D) By Sri.S K G.,Advocate)

Respondents: V/s
Gange W/o Seetarama Bhatta and
another
(Respondents By Sri. M G H .,Advocate)

I A NO. VI

Applicants: 1(A) Manjunath Dyava Naik and others

V/s

Opponents: Gange W/o Seetarama Bhatta and
others

ORDER ON I.A.NO.VI FILED U/O. XXVI RULE 9 OF C.P.C.

The applicant /plaintiff No. 1(a) filed an application under Order XXVI Rule 9 of C.P.C., for seeking the appointment of a Court

Commissioner to measure and identified the existence of road in the suit schedule property.

2. In the affidavit filed in support of the application, Applicant/plaintiff No. 1(a) sworn to facts that,

In the said suit schedule property Haveenbeelu village sy. No. 104/1 which in measurement of east , west 12 to 15 feet width and 450 feet length public road has mentioned in the rough sketch. In this road public , domestic animals and vehicles are ingress and egress over the said in all seasons in peacefully. Under such circumstances, the defendants are encroached the said road and constructed a compound and residential house. Further defendants are alleged that , there is no existence of the such road. But, in the suit schedule property sy No. 00-01-08 B Kharab property is there. The suit schedule property road is only way to ingress and egress the plaintiffs. There is no other alternative road to connecting their house. Further the said road is existence as mentioned in the suit schedule property. Under such circumstances defendants are denied the existence of the same. Hence, it is just and necessary to appoint a court commissioner measure and identified and also existence of the said road. Hence, plaintiff No. 1(a) filed this application an appointment of court commissioner therefore pray for appointment of court commissioner in the interest of justice and equity .

3. On the other hand, the learned counsel for the defendant filed objection to I.A.No. VI and he contended that, in the instant application filed by the plaintiff to seeking an appointment of commissioner is not tenable in the eye of law and reasons shown in the affidavit is not sufficient ground for appointing a commissioner . Therefore, it is liable to be rejected.

The suit of the plaintiff for declaration and permanent injunction against the defendants. The plaintiff has prays for easement right. Therefore , seeking application filed by the applicant,

to bring the actual location of the suit schedule properties is not necessary to adjudicate the matter and commissioner is not competent person to this suit as prayed in the application. In this Hon'ble court allowed this application the defendants will be put great hardship. The plaintiff has not entitled to any reliefs as prayed in the application. Hence, pray for dismiss the said application in the interest of equity and justice.

4. Heard on both sides and perused the materials.
5. Now the points that will arise for my consideration are:-
 1. Whether the applicant / plaintiff no 1(a) has made out sufficient grounds to appoint a Court Commissioner as prayed in the application?
 2. What Order?
6. My answers to the above points are:-
 - Point No.1 :- In the **Affirmative.**
 - Point No.2 :- As per my final order below for the following:-

:: REASONS ::

7. **Point No.1:-** I am of the opinion that, I need not repeat the entire facts of the application and objection here also, since I have already narrated the same at the inception of this order.

In this case, I have completely gone through the entire suit file. This is the suit filed by the plaintiff for the relief of easement right over the suit schedule road. In this case, when the case has been posted for plaintiffs' evidence, the applicant / plaintiff No. 1(a) has come up with this application for seeking appointment of a Court Commissioner to measure and identify and also existence of the plaintiff's suit schedule road, in the suit schedule property.

8. In the application it is stated that and prayed to appoint a Court Commissioner to hold local inspection and existence of the suit property. In the accompanying affidavit it is also stated that, the plaintiffs sought the relief for easement right over the suit schedule road and permanent injunction easement of the said road by restraining the defendants and their agents. In order to examine whether the suit schedule road was existence in the suit schedule property or not, and also ascertain to the same. Hence, the present application is to be necessary. Otherwise, the plaintiff's will be put to inconvenience and irreparable loss and injury. Accordingly, prayed to allow the said application.

9. On the other hand, the learned counsel for the defendants filed objection to the said application and denied the application reasons and also oppose the appointment of court commissioner in this case. Hence, application is not maintainable and pray for dismiss the same.

Such circumstances it is necessary to observe the what is the ingredients of U/o 26 rule 9 hence, I have also gone through the U/O.XXVI R. 9 of C.P.C. which read as follows:-

"9. Commissions to make local investigations.- In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules."

10. In the light of the above provision, I careful scrutinized of the contents of I.A.No.VI and also after hearing on both sides on said application, I am of the opinion that since, the suit is for the Relief of Easement Right over the suit schedule road, further, the plaintiffs are alleged that defendants are trying to disturb and further alleged the existence of the said road and also trying to encroached the same. Under such circumstances, and also easement of necessity of the said road and also existence of the same is concerned, if appointed as a Court Commissioner to hold local inspection of the suit property and also identify and existence of the suit schedule road, it is no hardship will be caused to the defendants.

11. Therefore, in this case it is pertinent to note that, the plaintiffs have filed this suit for the Relief of Easement of necessity over the suit schedule road and the plaintiffs evidence is yet to be commenced. If this I.A. is allowed, the controversy involved in the suit is properly adjudicated and it's also avoids multiplicity of proceedings. Therefore, if the taluk Surveyor is appointed as Court Commissioner to hold the local inspection, no hardship will be caused to the defendants. Moreover, there is no question of collection of evidence if identification and also existence of the alleged suit schedule road as easement of necessity. Further , the commissioner report will be helped to the adjudicate the present case to the complete and effective manner. Therefore, the applicant/plaintiff No. 1(a) has made out sufficient grounds to allow the said application. On the other side, if application is allowed there is no caused injury or loss to the other side. Therefore, I will accept the arguments submitted by the learned Counsel for the applicant/plaintiff No. 1(a)

and also satisfied the application's reasons. Accordingly, the said application is deserved to be allow hence, this court has answered Point No.1 is in the '**Affirmative**'.

12. **Point No.2:-** In the light of the above discussion, I proceed to pass the following:-

:: O R D E R ::

I.A.No. VI filed by the applicant / plaintiff No. 1(a) U/O.XXVI Rule 9 of C.P.C., is hereby allowed.

A Taluk Surveyor, Siddapur is hereby appointed as a Court Commissioner.

The Court Commissioner fee is tentatively fixed Rs.2,000/-.

The applicants/plaintiff No. 1(a) are hereby directed to deposit Court Commissioner fee.

Both the plaintiffs and defendants are hereby directed file their respective of memo of instructions in the next date of hearing without fail if any.

(Dictated to the Stenographer directly on the computer, corrected by me and then pronounced in the Open Court in this 08 day of September 2022.)

Sd/-
(Thimmaiah G.),
Civil Judge and J M F C
Siddapur.

