

Orders on I.A.No.XX

The learned counsel for defendant No.4 filed I.A.No.XX under Order XXVI Rule 1 and Section 151 of C.P.C and requested to appoint any advocate of Udupi Bar Association as Court Commissioner to record the evidence of defendant No.4.

In the memorandum of facts, the learned counsel pleaded that, defendant No.4 is a senior citizen. Defendant No.4 is in bed ridden and unable to move the daily basis. Defendant No.4 is unable to give evidence before the court. The learned counsel requested to appoint the court commissioner by allowing the application.

In the objection learned counsel for plaintiff pleaded that, the application is not filed, by following the Civil Rules of Practice. No grounds are made out for appointing the court commissioner. No materials are produced in support of the contention. Defendant No.4 is hale and healthy and perfectly alright to appear before the court to adduce evidence. Application is filed in order to avoid enter the witness box. The learned counsel for plaintiff requested to reject the application.

The learned counsel for defendant No.4 pleaded that defendant No.4 is a senior citizen, bed ridden and he is unable to move his daily work. On the other hand, the learned counsel for plaintiff pleaded that no documents

are produced. Defendant No.4 is perfectly alright. On perusal of the papers, this suit was filed in the year 2019. At the time of filling of the suit, plaintiffs pleaded the age of defendant No.4 as 72 years in the cause title. When the defendant No.4 was 72 years in the year 2019, now the age of defendant No.4 is around 78 years. It is clearly shows that, the defendant No.4 is old aged person. The court cannot expect the personal appearance of defendant No.4 to record the evidence. Such being the case, in the opinion of court appoint the court commissioner to record the evidence of defendant No.4 is necessary. Hence, pass the following:

ORDER

I.A.No.XX filed by the respected counsel for defendant No.4 under Order XXVI Rule 1 and Sec.151 of C.P.C is hereby allowed.

To suggest the name of Court Commissioner.

