

Order on I.A.No.V

The plaintiff has filed this application under Order XXVI Rule 9 and Sec.151 of C.P.C. and prayed for appointment of an advocate-commissioner with the assistance of Taluk Surveyor to measure the plaint 'A' schedule property and the property of the 1st defendant in Sy.No.193/1F

measuring 1.40 acres of Marne Village and to submit sketch and report.

2. In the supporting affidavit it is pleaded that the plaintiff is the owner in possession of 'A' schedule property and he has purchased the same from the 1st defendant as per Registered Sale Deed dated 14-03-2007. The defendants deliberately disputing the correctness of the measurement of 'A' schedule property. Hence, he has got measured the same through the ADLR, but the same is also not accepted by the defendants. The defendants are disputing the location, identification and boundaries of the plaint 'A' schedule property. It is also averred that the 1st defendant has filed O.S.No.73/2014 in respect of property bearing Sy.No.193/1F measuring 1.40 acres for the relief of permanent injunction against the plaintiff. This suit is clubbed with O.S.No.73/2014. It is pleaded that the location and identification of the plaint 'A' schedule property and that of the property of the 1st defendant with reference to the boundaries is very much necessary and essential to decide the disputes involved in the both the suits. Accordingly, prayed for appointment of an advocate-commissioner by allowing the application.

3. The defendants have filed objection denying the grounds urged by the plaintiff. It is contended that the plaintiff

has produced two sketches before the court and he is not definite regarding the existence and location of the suit property. Accordingly, in the form of commission, the plaintiff intends to collect the evidence without placing any definite yardstick for identification of the properties. It is further contended that there are no grounds for issuance of commission and commissioner cannot be appointed to determine the possession. Accordingly, prayed for dismissal of the application.

4. Heard the learned counsels for the plaintiff and defendants.

5. This suit and O.S.No.73/2014 are filed praying the relief of permanent injunction. The parties have made rival allegations of interference of one another in their respective possession. On cumulative perusal of pleadings of both the parties it is evident that the crux of the matter lies in identifying the boundaries of the properties involved in both the suits and location thereof. Admittedly the 1st defendant has sold 0.35 acre of land in Sy.No.193/1HP2 as per Registered Sale Deed dated 14-03-2007. The measurement of the property sold by the 1st defendant in favour of the plaintiff is not in dispute. The 1st defendant disputes the sketches placed on record. Under these circumstances, I feel it just and proper to

appointment a court commissioner to effect measurement of 'A' schedule property in the light of the boundaries shown in the Registered Sale Deed dated 14-03-2007. So also in order to determine the rights of both the parties and for effective adjudication, it is also necessary to direct the court commissioner to effect measurement of the property of the defendants i.e. the suit property in O.S.No.73/2014 i.e. Sy.No.193/1F measuring 1.40 acres of Marne Village.

6. The appointment of commissioner is necessary since no amount of oral evidence would help the court in appreciating the exact boundaries and location of properties of the plaintiff and defendants. Further, no prejudice will be caused to the defendants since their claim in O.S.No.73/2014 will also be adjudicated by taking assistance of the commissioner's report. It will help the case of the defendants also. In view of my observation above, I feel it just and proper to allow the application filed by the plaintiff. Accordingly I proceed to pass the following:

Order

I.A.No. V filed by the plaintiff under Or.
XXVI rule 9 and section 151 of C.P.C. is hereby
allowed.

An Advocate-Commissioner is appointed to note and report about the boundaries of suit property.

The Tahasildar, Karkala, is directed to depute a competent Surveyor to assist the Court Commissioner in executing the commission work.

The Court-Commissioner shall effect measurement of 'A' schedule property of O.S.No.86/2015 and the property of the 1st defendant in Sy.No.193/1F measuring 1.40 acres of Marne Village and to submit report.

The fee of the advocate-commissioner is fixed at ₹. 2,000/- and that of the Surveyor is fixed at ₹. 700/- tentatively and the same shall be paid by the plaintiff.

For deposit of fees of the Advocate-Commissioner and Surveyor and also for naming the advocate-commissioner, call on:

Prl. Civil Judge & JMFC.,
Karkala.

