

ORDER ON COMMISSIONER'S REPORT

In this case as per the order of court an Advocate, who was appointed as court commissioner, in pursuance of issuance of commission warrant court commissioner has carried out commissioner work and submitted report thereon.

2. To the above mentioned commissioner report the learned counsel for the plaintiff filed objection contending that, it is clear from the report of the commissioner that the house building occupied by the defendant is in the kumki lands of the plaintiff i.e within 100 yards. The commissioner should have wirtten in his report that the 'B' schedule property is within the kumki land of the 'A' schedule property.

3. On the other hand, the learned counsel for the defendant has filed objection contending that the suit 'B' schedule property is wrongly located in the sketch annexed to the commissioner report. The sketch produced by the defendant i.e Ex.D18 clearly shows the location of the suit 'B' schedule property. The said sketch was prepared by the then Taluk Surveyor in the year 2010 and there is much difference in the location of the suit 'B' schedule property and are not tallies with the sketch annexed to commission report. Further contended that on the eastern side of the suit 'B' schedule property there exists a motorable concrete road in Sy.No.360 of Nitte Village runs form North to South. From the said concrete

road the property in Sy.No.58/3 is situated at distance of morethan 90 meters and which is in between the suit 'B' schedule property and Sy.No.58/3. Apart from that there are several residential houses belonging to others are situated nearby the suit 'B' schedule properties. Further contended that in para 4 of the report the commissioner clearly states that he could not measured the property in Sy.No.61/1, 62/1, 62/12 etc., Thus from this it is clear that the location of the suit 'B' schedule property in the sketch annexed to commission report in not correct. Without locating the above said kadim lands the suit 'B' property is within 450 links (90 meters) from the kadim warg properties of defendant's family. The Commissioner has not reported the said relevant facts in his report. As such the plaintiff sought for redirecting the commissioner to make note of the above said objections and to submit further report.

4. Heard. Perused the objection filed by the plaintiff and the commissioner's report submitted by the commissioner. Further I have also gone through the direction issued by this court for execution of commission work by the commissioner. On careful perusal of the commissioner's report and the points required to be noted by the commissioner as per the directions of this court, the report submitted by the court commissioner discloses the observation of the commissioner, the preparation of commissioner's report in answer to the points referred by him. The objections raised by the parties are not sufficient

grounds to refer back the commissioner's report for carrying out fresh commission work and to submit the report. It is for the parties herein to adduce direct evidence and to establish their stand. The report submitted by the commissioner is sufficient to meet out the necessities. Accordingly the report submitted by the commissioner is accepted and the objections of plaintiff is over-ruled. In this view of matter, I proceed to pass the following;

ORDER

The report filed by the court commissioner is hereby accepted.

The parties are at liberty to cross examine the court commissioner with regard to correctness or otherwise report submitted by him or same can be disproved by leading independent evidence.

For further steps in examining court commissioner, if any.

Call on:

Prl.Civil Judge & JMFC,
Karkala.