

**IN THE COURT OF PRINCIPAL CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS AT KUNDAPURA**

Present : SMT. SHRUTHI SHREE S, *B.A. LL.B.*
Prl. Civil Judge & J.M.F.C.,
Kundapura.

Dated this the 29th day of November, 2023

Original Suit No. 154/2023

Parties to I.A. No. III:

Applicant/s: 1) Sheshamma Shedthi, 88 years,
D/o Late Chandamma Shedthi.

2) V. Prabhakar Shetty, 57 years,
S/o Sheshsamma Shedthi,
Agriculturist, Gudarmakki,
Vakwadi Village and Post,
Kundapura Taluk, Udupi District.
(By Advocate Sri. M.J.S.)

//Vs//

Opponent/s: Rathnavathi Poojarthi, 48 years,
W/o Shankar Poojary,
Mathrashree Nilaya,
Vakwadi Village and Post,
Near Post Office,
Kundapura Taluk, Udupi District.
(By Advocate Sri. S.S.N.)

Parties to the suit:

Plaintiff : 1) Sheshamma Shedthi and another
V/s
Defendant : Rathnavathi Poojarthi

i.	Provision under which the application is filed	Order XXVI Rule 9 R/w Section 151 of CPC
ii.	Relief sought for	Appointment of Court Commissioner
iii.	The date on which the application is filed	05-04-2023
iv.	Number of the application	I.A. No. III
v.	The date on which the objections are filed by different opponent	21-07-2023
vi.	The date on which the orders were passed on the said application	29-09-2023

ORDERS ON I.A. III

The counsel for the plaintiffs have filed I.A.No. III under Order XXVI Rule 9 R/w Sec. 151 of CPC.

2. The plaintiff in the accompanying affidavit has contended that defendant has illegally and unauthorizedly encroached portion of suit 'A' schedule property describe as 'B' schedule property by constructing new compound wall and not allowing plaintiff to enjoy suit 'A' schedule property under a apprehension of changing landscape. Therefore it is necessary that a local inspection is carried on to know the actualities of suit schedule properties as per work memo stated in the application. Accordingly seeks to allow the application.

3. Per contra, defendant has objected this application by filing counter claim.

4. I have heard the learned counsels for parties and perused the record.

5. The point that arise for my consideration is:-

P O I N T S

- 1) Whether plaintiffs have made out sufficient grounds to allow I.A., No. III?
- 2) What order?

6. My answer to the above points are as under;

Point No.1 : In the Affirmative

Point No.2 : as per the following:-

R E A S O N S

7. **Point No.1:** This suit is filed by plaintiff seeking for mandatory injunction and permanent injunction in respect of suit 'A' and 'B' schedule properties. Per contra defendant has sought for declaratory relief in respect of counter claim 'B' schedule property.

8. The revenue entries in RTC reveals 0.15 acres to be in possession of plaintiff, 0.07 acres to be in possession of defendant. At this interim stage it is not possible to ascertain if the exact portion of

alleged encroachment or claim as contended by each other is exactly 0.06 acres or 0.04 acres which are 'B' schedule properties in both suit and counter claim. Therefore in order to ascertain encroachment if any, also as held by Hon'ble Apex Court, it is necessary to ascertain extent of encroachment if any and appointing Commissioner in that regard would be necessary. Work noted to be executed by commissioner would aid this Court in adjudicating dispute between the parties and also the actualities of suit and counter claim schedule property as on date of commission which would resolve the dispute between the parties. Therefore this application deserves consideration. Hence **POINT No. 1** is answered **IN THE AFFIRMATIVE.**

9. Point No.2: In view of findings on point No. 1, this Court proceed to pass the following:

O R D E R

I.A. No. III filed by the plaintiff under Order XXVI Rule 9 of CPC., is hereby allowed.

(Dictated to the stenographer, directly on computer, revised by me and then pronounced in the open Court on this **29th day of November, 2023**)

(Shruthi Shree S.)
Prl. Civil Judge & J.M.F.C.,
Kundapura.