

KAUP400012942023



**IN THE COURT OF CIVIL JUDGE AND JUDICIAL  
MAGISTRATE FIRST CLASS AT BAINDURU.**

**PRESENT**

**Smt.Vidya, A.S.** B.A., LL.B.  
**Civil Judge & J.M.F.C., Baiduru.**

**Dated: This the 24<sup>th</sup> day of April, 2024.**

**O.S.No.487/2023 (Old No.417-2021)**

<b>Plaintiff:</b>	<b>Smt. Subbi Devadiga,</b> Aged about 90 years, W/o. Naga Devadiga, Vidyanagara, 1 <sup>st</sup> Grade College Road, Baiduru Post and Village Baiduru Taluk.
<b>Defendants:</b>	<b>Sri. Vasanth Kumar Shetty,</b> Aged about 56 years, S/o. Ananda Shetty, Hoadumakki, Yedthare Village and Post, Baiduru Taluk.
	<b><u>Rank of the Parties On I.A.X</u></b>
<b>Applicant/Plaintiff:</b>	<b>Smt. Subbi Devadiga</b>
	<b>(Rep.by Sri.N.S.R.B-Advocate)</b>
<b>Opponents/Defendants</b>	<b>Sri. Vasanth Kumar Shetty</b>
	<b>(Rep.by Sri.T.B.S.-Advocate)</b>
<b>Provision</b>	<b>U/o.XXVI Rule 9 R/w. Sec.151 of CPC.,</b>
<b>Relief sought for</b>	<b>For Local Inspection</b>

<b>Application date</b>	<b>22-06-2023</b>
<b>Application No.</b>	<b>X</b>
<b>Objection filed on</b>	<b>13-07-2023</b>
<b>Order passed on</b>	<b>24-04-2024</b>

### **ORDERS ON I.A. No.IV**

The plaintiff has filed IA No.X under order XXVI Rule 9 and R/w. Sec.151 of CPC for appointment of Court Commissioner to conduct local inspection.

2. In the accompanying affidavit, the applicant has stated that the defendant is making hectic efforts to forcibly oust plaintiff and her family members from the residential house situate in the suit properties and thereby to take forcible possession of the same from their hands, by using force and also his money and muscle power, illegally and high-handedly. So, if the present topography of the suit properties with various features situate therein are noted by the Commissioner and are reported to the Court, it would be helpful for the court in arriving at a right conclusion. With these averments, the applicant has sought for allowing the application.

3. Per contra, defendant has filed objection to the said application, wherein he has denied the averments made in the

affidavit contending that, the plaintiff is claiming right over the suit schedule property which was the government land encroached by the defendant and on his application for regularization of the unauthorized occupation of the same the committee constituted for the said purpose granted the said land to defendant in the year 2001 itself. The plaintiff or any other persons have not challenge the said grant. The defendant has put up a shed in the suit schedule property and paying building tax for the said shed to the local body. Now the plaintiff is trying to prove that the said shed belong to her. The dispute is in respect of the grant government land to the defendant. If the plaintiff is aggrieved by the said grant the remedy for the same is before the appellate authority under Land Revenue Act. But the plaintiff has come to the civil court for redressal of her grievance. With these contentions the opponent has sought for rejecting the application.

4. Heard and perused the materials on record.

5. Now, the following points arise for consideration of this Court are:

Point No.1: Whether the appointment of a commissioner for local investigation is necessary for the purpose of elucidating the matter in dispute?

Point No.2: What order ?

**6.** The findings of this Court on the above said points are as under:

Point No.1: in the negative,

Point No.2: As for the final order

for the following:

**REASONS**

**7. Point No.1:** In the case on hand the suit is filed by the plaintiff for Declaration and Permanent Injunction. The plaintiff has to establish her case with regard to her possession by adducing oral and documentary evidence. In this case the entire burden on the plaintiff to prove her possession. The question of possession is to be decided by the Court. In this case still parties are required to adduce their evidences. It is pertinent to note that, the nature of work of the court commissioner mentioned in the application, somewhere the works are relating to prove the possession of the suit schedule properties. It is well settled law that the court commissioner cannot appoint to prove the possession of the suit schedule properties. It is important to note that, suit schedule property already granted in favour of defendant in the year 2001 itself. The plaintiff has not challenged the

aforesaid grant till today. The applicant has not made out any ground for allowing the application. With these observations this Court has answered point No.1 in the negative.

**8. Point No.2:** For the aforesaid discussion on point No.1, this Court proceeds to pass the following:

**ORDER**

**I.A.No.X filed by the applicant under Order XXVI Rule 9 R/w. Section 151 of CPC is hereby rejected.**

**For Reply by Sri.N.S.R.B to I.A.II.  
Finally.**

**Call on:14-06-2024.**

( Partly dictated to the typist, partly typed by me, corrected by me and then pronounced in the open Court on this **24<sup>th</sup> day of April, 2024**)

**(Smt.Vidya A.S)  
Civil Judge & J.M.F.C., Baiduru.**