

ORDER BELOW EXHIBIT 41 IN REGULAR CIVIL
SUIT NO. 246 /2013.

01. Perused the application and say of it. Heard the learned advocate for plaintiff and defendants and gone through the record. Plaintiffs have moved this application under Order 26 Rule 9 of Civil Procedure Code for appointment of court commissioner.

02. It is the contention of plaintiffs that, plaintiffs No.1 to 3 are the members of joint Hindu family and plaintiff No.1 is the Karta of family. Suit property from Gut No.216 admeasuring 2 H 55 R was purchased by the plaintiff from one Manisha Dhaigude on 14/02/2008 by registered sale deed in the name of plaintiffs No.2 and 3. Since the date of sale deed plaintiffs are in possession of the sale deed. By order below exh.5 court has granted temporary injunction in respect of the suit property in favour of the plaintiffs. Defendants are claiming their possession on the basis of revenue entries in their name. Yet no any measurement of the suit property is not carried by TILR office. To avoid the dispute between the parties it is require to appoint TILR Ambajogai as a Court Commissioner. Therefore, prayed to appoint TILR as a Court Commissioner and thereby give direction to him to carry measurement, fix the boundaries and submit the report accordingly. If application is allowed no any harm or prejudice will cause to the defendants. At last prayed to allow the application.

03. Defendants have resisted the application by filing say on it. Defendants have denied all the contention of plaintiffs. Defendants further submitted that, plaintiffs have admitted the decree passed in favour of defendants in R.C.S.No.217/2010. Court has already granted injunction in favour of defendants in respect of 32 R land from Gut No.216. Only to harass the defendants and to prolong the proceedings plaintiffs have filed this false application. At last prayed to reject the application.

04. Heard the Ld. Advocates of plaintiffs and defendants and gone through the record. Record shows that plaintiffs have filed the present suit for declaration of ownership and perpetual injunction on the basis of the sale deed executed by Manisha in favour of plaintiffs No.2 and 3. In a suit for perpetual injunction plaintiffs have to show their ownership and possession on the suit property and the obstruction and interference at the hands of defendants and to discharge their burden plaintiffs cannot take a help of the court. Further it is a settled legal position that, commission cannot be appointed to collect the evidence. In such circumstances if application as prayed is allowed, it will help the plaintiff for collection of evidence which is any way not desirable. Therefore, I proceed to pass following order.

ORDER

Application is rejected.

Date : 03/02/2015.
Ambajogai.

Sd/-
(Mrs. S.S. Mane)
Jt. Civil Judge Jr. Divn.,
Ambajogai.