

(2011) 11 KAR CK 0273

In the Karnataka High Court

Case No : Writ Petition No. 38088 of 2011 (GM-CPC)

K. Gopal Murthy

APPELLANT

Vs

Vasanth Kumar Beml Employee and The Commissioner City
Municipal Robertsonpet KGF-563122

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9, 151

Citation : (2011) 11 KAR CK 0273

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Prashanth P.N, for the Appellant;

Final Decision : Dismissed

Judgement

Hon"ble Mrs. Justice B.V. Nagarathna

1. This writ petition is directed, against the order dated 29.8.2011, passed on an application filed under Order XXVI Rule 9 read with 151 of the CPC by the petitioner herein.

2. The relevant facts of the case are that the petitioner has filed a suit seeking declaration as well as for temporary and mandatory injunction against the defendants/respondents. In the said suit, issues were framed on 23.5.2011. The evidence is yet to commence. At that stage, the petitioner has filed an application under Order XXVI Rule 9 of the Civil Procedure Code, The said application has been dismissed by holding that it is a premature application, since the parties have not let in evidence in the matter and therefore, it is not necessary to appoint a Court Commissioner. The said order is impugned in this writ petition.

3. I have heard the Learned Counsel for this petitioner and perused the material on record.

4. Having regard to the fact that the evidence is yet to commence in the matter, at that stage, the Trial Court was justified in stating that the application filed under Order XXVI Rule 9 read with 151 of the CPC was premature. The said order would not call for interference in this writ petition.

5. The writ petition is accordingly dismissed. However, liberty is reserved to the petitioner to make such an application at a later stage of the suit, if so advised. If such an application is filed, the Trial Court shall consider the same in accordance with law.