

(2013) 11 KAR CK 0173

In the Karnataka High Court

Case No : Writ Petition No. 80653 of 2011 (GM-CPC)

Saibanna and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

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

Citation : (2013) 11 KAR CK 0173

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : S.S. Gola, for the Appellant; Sharanabasappa K. Babshetty, HCGP for R1, 2 and 7 and Sri Ashok S. Kinagi, for R3, R4 and R6(a), R5, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Rejection of petitioners' I.A. No. 8 under Order XXVI Rule 9 of the Code of Civil Procedure, in O.S. No. 4/2009, by order dated 24.02.2011 of the Prl. Civil Judge (Sr.Dn.) and M.A.C.T., Gulbarga, has resulted in this petition. Petitioners instituted O.S. No. 4/2009 for declaration and injunction asserting that they had five shares in the suit schedule immovable properties, which, defendant Nos. 3 to 6, none other than respondent Nos. 3 to 6 herein contended that petitioners were entitled to only two shares, as stated in paragraph 2 of the affidavit accompanying I.A. No. 8. Hence I.A. No. 8 was filed for appointment of the Taluka surveyor to inspect the suit property and report "about possession of plaintiffs and defendants".

2. It is needless to state that Order XXVI Rule 9 of the CPC is not available to petitioners/plaintiffs to secure a report of the Commissioner over who is in possession of the suit schedule properties. Order XXVI Rule 9 can be resorted to only if the Court feels that for the purpose of elucidating certain details which in its opinion can neither be had from the records nor can be produced by parties by way of oral or documentary evidence, and not otherwise, as held by this Court

in the case of Annappa Mestha Vs. Mutayya Achari, .

3. If regard is had to Order XXVI Rule 9, an application for appointment of Commissioner to report as to whether plaintiffs" are entitled to five shares in the suit schedule properties cannot be resorted to, since petitioners will have to establish as a matter of fact by tendering evidence, both oral and documentary over their right to five shares in the suit schedule properties.

4. Learned counsel for the petitioners submits that the parties have concluded the trial and the suit is listed for final hearing. This is yet another reason for rejection of IA No. 8. In the circumstances, the trial court, in my considered opinion was fully justified in rejecting the application. In the result, this petition devoid of merit is rejected.

In view of rejection of writ petition, I.A. 1/2013 for extension of stay does not survive for consideration and is dismissed as having become unnecessary.