
(2010) 11 KAR CK 0039
In the Karnataka High Court
Case No : Writ Petition No. 34765 of 2010

Sri Munishamappa and Others

APPELLANT

Vs

Sri Chandrappa, Sri Saradar and Sri Anjanappa

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9, 75 (b)

Citation : (2010) 11 KAR CK 0039

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : K. Abhinav Anand and Sri C. Nagesh, for the Appellant; M.S. Varadarajan, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Petitioners/Plaintiffs filed I.A.7 under Order 26 Rule 9 CPC to appoint the Taluka Surveyor as Court Commissioner to inspect the suit property and to submit the report. The 1st Defendant filed statement of objections to I.A.7. The other Defendants filed a memo adopting the statement of objections filed by the 1st Defendant. The Trial Court upon consideration of I.A.7, finding the same to be devoid of merit, has passed an order of dismissal dated 21.10.2010. Aggrieved, the Plaintiffs have filed this writ petition.

2. Sri K. Abhinav Anand, learned Counsel appearing for the Petitioners contended that, in the facts and circumstances of the case, there is a need for appointment of Court Commissioner to elucidate the matter since there is a dispute with regard to the identity of the property. Learned Counsel contends that, the Trial Court has not considered I.A.7 in the correct perspective.

3. Sri M.S. Varadarajan, learned Counsel appearing for the Respondents on the other hand made submissions in support of the findings and conclusion of the Trial Court in the impugned order.

4. Keeping in view the rival contentions and record, which I have perused, the

point for consideration is: whether dismissal of I.A.7 is irrational?

5. The suit is one for ejectment and consequential reliefs. The Defendants have filed written statement and have contended that, they have nothing to do with either Sy. No. 94 or Khaneshumari No. 1/1 and their property is given different number in the grant certificate itself. Issues having been framed, trial the suit has taken place and both the sides have adduced evidence.

6. The Trial Court upon consideration of I.A.7 has held that, the application if allowed would amount to collection of evidence, which is not permissible in law.

7. Rule 9 of Order 26 r/w Section 75(b) CPC confers power on the Court to appoint a Commissioner to elucidate the matter in dispute if it deems that, such appointment is necessary. The Trial Court in exercise of its discretion, has found it unnecessary to appoint the Court Commissioner. Since the impugned order is a discretionary order and the Trial Court has found it unnecessary to appoint the Court Commissioner, I do not find any justification in exercise of jurisdiction under Article 227 to interfere with the impugned order.

In the result, writ petition fails and shall stand dismissed. However, the Trial Court shall decide the suit upon correct appreciation of the evidence which has been brought on record by the parties uninfluenced by the order passed on I.A.7.