

(2012) 09 KAR CK 0026

In the Karnataka High Court

Case No : Writ Petition No. 16733 of 2012 (GM-CPC)

Syed Rahamathulla and Smt. Noor Jahan

APPELLANT

Vs

Abdul Khuddus, Dead by L.Rs.: Naveed and Others

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

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

Citation : (2012) 09 KAR CK 0026

Hon'ble Judges : Ravi Malimath, J

Bench : Single Bench

Advocate : Varadaraj R. Havaladar, for the Appellant; Purna Law Assts, for R1 (A) - (G), for the Respondent

Judgement

Ravi Malimath

1. The respondent - plaintiff filed a suit for declaration. During the pendency of the suit, he filed an application under Order - 26, Rule 9, read with Section - 151 of C.P.C., seeking appointment of a Commissioner. The Trial Court by the impugned order allowed the same. Hence, the present petition by the defendant. The Learned Counsel for the petitioner contends that the impugned order is bad in law and liable to be set-aside. That the Trial Court misdirected itself in allowing the application, even before commencement of evidence. Hence, the application be rejected on that ground alone.

2. The Learned Counsel for the respondents defends the impugned order. He contends that the Trial Court was of the considered view that, it is appropriate to appoint a Commissioner, and hence he pleads that there is no error committed by the Trial Court that calls for interference.

3. On hearing the Learned Counsels and on examining the material on record and the impugned order, I am of the considered view that the Trial Court committed an error in allowing the application to appoint a Commissioner, in a case where evidence is yet to commence. It is only after evidence is recorded

and in such an event if evidence is recorded and on consideration of the same, if the Trial Court is of the view that appointment of the Commissioner is necessary and just, in order to assist the Court it is only at that stage that a Commissioner may be appointed. The Trial Court to allow such an application at this stage of the suit is premature.

4. Under these circumstances, liberty is always available for the respondents to make such an application after closure of evidence, for an appointment of a Commissioner, if necessary, which the Trial Court shall necessarily consider on merits. For the aforesaid reasons, the order 29.03.2012, passed by the Principal Civil Judge (Junior Division), and JMFC, Shimoga, is set-aside.

Ordered accordingly.