

**Puttappa Vs. Ramappa**

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**Court :** Karnataka

**Decided On :** Feb-20-1996

**Reported in :** AIR1996Kant257; ILR1996KAR1443; 1996(2)KarLJ70

**Judge :** P. Krishna Moorthy, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 26, Rule 9

**Appeal No. :** Civil Revision Petition No. 429 of 1996

**Appellant :** Puttappa

**Respondent :** Ramappa

**Advocate for Pet/Ap. :** P. Nataraju, Adv.

**Judgement :**

ORDER

1. I do not think that any interference is called for with the order of the lower Court.
2. In this revision by the plaintiff, he is challenging the order of the trial Court which rejected the application for the issuance of a commission to find out as to who is in possession of the plaint schedule property. The suit is for a permanent injunction, restraining the defendant from interfering with the plaintiff's possession of the suit schedule property. The defendant contends that he is in possession of the suit schedule property. The plaintiff filed an application for issuance of a commission

under O. 26 of C.P.C. to find out as to who is in possession of the property which was rejected by the lower Court. Plaintiff has challenged the same.

3. I think, the lower Court is right that a Commissioner cannot be appointed to find out as to who is in possession of the property. Under O.26, C.P.C., a Commissioner can be appointed to make local investigation to investigate the facts or other materials which are found in the property and to make a report in regard to that matter to the Court. In a suit for injunction the question as to who is in possession of the property, is a matter to be decided by the Court on the basis of the evidence, either oral or documentary, to be adduced by the parties. That function cannot be delegated to a Commissioner who cannot find out as to who is in possession of the property. Accordingly, the lower Court was right in rejecting the application.

4. The counsel for the revision-petitioner relied on a decision of the Delhi High Court reported in *Manmohan Service Station v. Moh. Haroon Japanwala*, AIR. 1994 Delhi 537, wherein the Court has relied on a Commissioner's report in regard to the possession of the plaintiff at the interlocutory stage by considering the question as to whether a temporary injunction should be granted or not. The Court in that case has relied on an ex parte report of a Commissioner who stated in his report that the plaintiff is in possession of the portion of the suit schedule property. The Commissioner had also produced a photograph which also the Court took into account for coming to the conclusion that prima facie the plaintiff is in possession of a portion of the property. With great respect, I am unable to agree with the view taken by the learned single Judge of the Delhi High Court that Commissioner's report can form the basis for coming to the conclusion that a party is in possession of the property or not. A Commissioner will not be in a position to determine the question as to who is in possession of the property when there is dispute between the parties regarding the same. The Court will have to decide the matter on the basis of the evidence to be adduced by the parties. It is not the function of the Commissioner to determine or to report to the Court as to who is in possession of the same. Accordingly, I find it difficult to agree with the view taken by the Delhi High Court in the aforesaid decision.

5. In view of what is stated above, I do not find any ground to interfere and this civil revision petition is dismissed.

6. Petition dismissed.

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