

Ramachandra Vs. Sundaram Setty

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SooperKanoon Citation : sooperkanoon.com/382840

Court : Karnataka

Decided On : Jan-05-1994

Reported in : ILR1995KAR1813; 1996(5)KarLJ583

Judge : M.B. Vishwanath, J.

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

Appeal No. : C.R.P. No. 2083 of 1994

Appellant : Ramachandra

Respondent : Sundaram Setty

Advocate for Def. : Udaya Holla, Adv.

Advocate for Pet/Ap. : Lawyer Inc., Adv.

Disposition : Revision petition rejected

Judgement :

ORDER

Vishwanath, J.

1. Heard both the Counsel. Admitted. Heard on merits. .

2. In this Revision Petition, the defendants-Revision petitioners have challenged the order passed by the learned Munsiff, Mysore on I.A.No. 3 under Order 26 Rule 9 C.P.C. in O.S.No. 12 of. 1994; I.A.No. 3 was filed by the defendants-Revision petitioners praying that the Commissioner should be appointed to go and take measurements and find out if there is any encroachment. The learned Munsiff rejected I.A. No. 3.

3. It is clear from the written statement that the defendants have admitted possession of the plaintiff and the measurements of the property. So there was nothing for the Commissioner to go and find out. If there was any encroachment, other remedies are open to the defendants. The encroachment, if any, cannot be gone into in a suit for permanent injunction in which possession and the measurements of the property are admitted. Secondly and more importantly, it is seen from the affidavit in support of I.A.No. 3 that the defendants do not say that the plaintiff has already encroached. What they say is that the plaintiff wants to make wrongful gain by encroaching on their property. The Commissioner cannot be appointed to collect evidence. The order of the learned Munsiff cannot be found fault with. The Revision Petition is rejected. It is made clear that if, in the future, during the pendency of the suit, the plaintiff makes any encroachment, it is open to the defendants to take appropriate proceedings.