

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 20TH DAY OF JULY, 2005

BEFORE

THE HON'BLE MR. JUSTICE AJIT J GUNJAL

WRIT PETITION No 18085 OF 2005 (GM-CPC)

BETWEEN

1 J ROY SEQUIRA
S/O.JULIAS SEQUIRA
AGED.37 YEARS, R/O.ST.JOSEPH'S NAGAR
JEPPU, KANKANADY, MANGALORE 575 002
REPRESENTED BY GPA HOLDER
GRETTA CARVALA D/O.JULIUS R SEQUIRA
AGED.42 YEARS, R/O.JEPPU, MANGALORE

... PETITIONER.

(By Sri B V KRISHNA, ADV.)

AND :

- 1 CYPRIAN D'COSTA SINCE DECD BY LRS
- (a) LILLY D'COSTA,
 - (b) MISS NANCY D'COSTA
 - (c) Mrs. IRENE LOBO
 - (d) Mrs. PRISCILLA D'MELLO
 - (e) Mrs. ANITA SERRAO
 - (f) Mrs. JOSELINE D'SOUZA

(g) Mr. SUNNY D'COSTA

No.1(a) IS THE WIDOW AND
No.1(b) to (g) ARE THE CHILDREN
OF LATE CYPRIAN D'COSTA,

ALL ARE ADULTS AND RESIDING NEAR
JEROSA SCHOOL, JEPPU,
MANGALORE-575002.

2. CONGREGATION OF THE URSULINE
FRANCISCAN SISTERS
REPRESENTED BY THEIR MOTHER
SUPERIOR, HOLY ROSARY CONVENT
JEPPU, MANGALORE 575 002

... RESPONDENTS.

THIS WP FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION, PRAYING TO QUASH THE ORDER
DT.2-7-2005 PASSED ON I.A. No.IV IN O.S.No.446/1989 BY
THE 11nd CIVIL JUDGE (SR.DN.) MANGALORE, AS
CONTAINED IN ANN.A.

ALLOW I.A. No.IV OR ALTERNATIVELY DIRECT THE
TRIAL COURT TO ALLOW I.A.No.IV FILED IN
O.S.No.446/1989 BY THE 11nd CIVIL JUDGE (SR.DN.),
MANGALORE FILED BY THE PETR. FOR APPOINTMENT OF
COMMISSIONER.

THIS PETITION COMING ON FOR PRELIMINARY
HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

ORDER

It appears in all three suits are filed. O.S. No. 352/98 is file by the respondent seeking permanent injunction against the ADLR; O.S. No. 446/99 is filed by the petitioner herein against the respondents for possession in respect of the suit schedule property and O.S. No. 541/99 is filed by the first respondent against the petitioner and respondent-2 for declaration that the sale executed by certain respondent in favour of the petitioner is null and void. It appears all the three suits are clubbed together and common evidence being recorded in O.S. No. 352/98. When the matter is set down for arguments after conclusion of trial, the present application I.A.4 is filed by the petitioner herein under Order 26 Rule 9 of CPC to appoint a Court Commissioner to hold local inspection with the assistance of a competent surveyor and to report the identification of the plaint schedule property with reference to certain documents and plan annexed to the same. The learned trial Judge has rejected the said application on two grounds - one is that the



evidence on record is sufficient enough for him to determine the dispute in question and the second is that the Commissioner's report is marked as Ex.P.14. On these two grounds the learned trial Judge was of the opinion that there are no justifiable grounds to entertain the said application. The impugned order is at Annexure-A.

2. Mr. B.V. Krishna, learned counsel appearing for the petitioner submits that so as to ascertain and demarcate the property in question the Commissioner is required to be appointed.

3. Apparently the bone of contention appears to be a bunk shop which is situate in T.S. No. 729/1 belonging to the third defendant (who is not a party to the proceeding), now stated to have been sold in favour of the petitioner herein. Apparently the suit instituted by the petitioner is one for delivery of possession. The existence of the bunk shop or otherwise is immaterial, in as much as, the same has been demolished and is no longer in existence, after the



defendant's took possession by executing the decree for eviction. Taking into consideration the over all situation, I am of the view that the question of appointing a Commissioner in question is not permissible.

Petition rejected.

Sd/-
Judge

uge