

Special Civil Suit No. 03/2026

Order at Exh. 19

1. The present application is moved by the plaintiffs under Order XXVI Rule 9 of the Code of Civil Procedure seeking appointment of a Court Commissioner for local inspection, measurement and preparation of a site map of the suit land. It is stated that the plaintiffs have instituted the suit for declaration and permanent injunction and have also preferred an application for temporary injunction, wherein the exact identity, location and physical features of the disputed land assume material significance. According to the plaintiffs, the land in question admeasuring A.10-00 gunthas situated on the eastern side of Forest Settlement No. 17/2 of Moje Chikhalkuba is claimed to have fallen to their share, while the land on the western side is ancestral, and a serious dispute has arisen regarding the precise location, boundaries and possession of the suit property. It is further contended that aspects such as existence of borewell for irrigation, electricity connection, fruit bearing trees and other physical features on the land are relevant facts which cannot be satisfactorily brought on record through oral or documentary evidence,

particularly in absence of clear forest or revenue records identifying the exact position of the suit land. It is thus asserted that local investigation through a Court Commissioner is necessary to ascertain the factual situation on the spot and to prepare a rough sketch/map, which would assist the Court in effectively adjudicating the controversy. The plaintiffs therefore pray that, in the interest of justice, a Court Commissioner be appointed to carry out site inspection in presence of the parties, conduct necessary measurement and prepare a site plan depicting the existing physical condition of the suit property.

2. No written reply has been filed on behalf of the defendants; however, upon appearance through their respective learned advocates, oral submissions have been advanced opposing the present application. Learned Advocates Mr. P.P. Bhatt and Mr. H.B. Jamani appearing for Defendant Nos. 5.2.1 to 5.2.4 have objected to the application on the ground that the same has been filed with a view to collect evidence and, in support thereof, have placed reliance upon the judgment of the Hon'ble Karnataka High Court reported in 1996 (2) Kant LJ 70. Learned Advocate Mr. J.N. Bhatt appearing for Defendant No. 4 has also opposed the application on similar grounds contending that the appointment of a Commissioner would

amount to collection of evidence. On the other hand, Learned Advocate Mr. B.B. Solanki appearing for Defendant Nos. 5.1.1 to 5.1.6 has not raised any objection and has submitted that an appropriate order may be passed in accordance with law. The learned Assistant Government Pleader appearing for Defendant Nos. 1 to 3 has also submitted that necessary orders may be passed as deemed fit and proper in accordance with law.

3. Having regard to the submissions made by both sides, it is clear that the present application is moved under Order XXVI Rule 9 of the Code of Civil Procedure seeking local investigation, measurement and preparation of a site map. The scope of such provision is well settled, namely that a Commissioner may be appointed where local investigation would assist the Court in elucidating the matter in dispute. In the present case, the controversy relates to identification, location and physical features of the suit property, which cannot be conveniently brought on record merely through oral or documentary evidence. Hence, recourse to local investigation is justified.
4. The Hon'ble Karnataka High Court in *Puttappa v. Ramappa*, 1996 (2) Kant LJ 70, has held that a Commissioner cannot be appointed to determine the question of possession, as such

issue is required to be decided by the Court on the basis of evidence led by the parties. However, the said judgment simultaneously recognizes that a Commissioner can be appointed for the purpose of local investigation to ascertain physical facts and features existing on the property. Thus, the law does not prohibit appointment of a Commissioner altogether, but restricts the scope of such appointment. In the present matter, the prayer of the plaintiffs is not confined to determination of possession, but extends to measurement of land, demarcation and noting of physical features such as existence of borewell, electricity connection and trees. These aspects are factual in nature and require on-site verification. Such exercise would aid the Court in understanding the exact nature and identity of the disputed property and would not amount to delegation of judicial function.

5. It is also significant that the plaintiffs have specifically pleaded that the exact location and identity of the suit land is not clearly reflected in the available records. In such circumstances, local investigation becomes necessary to bring clarity on record. Without such exercise, the Court may face difficulty in properly appreciating the rival claims, particularly in a suit involving declaration and injunction. Appointment of a Commissioner in the present case would

not amount to collection of evidence on behalf of either party, but would merely facilitate the Court in ascertaining the physical situation of the property. The evidentiary value of the Commissioner's report shall remain subject to scrutiny and objections by the parties, and the ultimate findings regarding possession and title shall be independently determined by the Court.

6. Therefore, considering the nature of dispute and the limited purpose for which local investigation is sought, this Court is of the view that appointment of a Commissioner would assist in effective adjudication of the matter. However, in view of the settled legal position, it is clarified that the Commissioner shall not express any opinion regarding possession or title of the property and shall confine his report strictly to measurement, identification and existing physical features of the suit land. In view of the aforesaid reasons, the application deserves to be allowed in the interest of justice. Hence, in the interest of justice, the Court passes the following order: -

Final Order

1. The present application is hereby allowed.

2. It is ordered that a Court Commissioner is hereby appointed for the purpose of carrying out local investigation of the suit property. The Commissioner shall visit the suit land in the presence of the parties or their representatives, carry out demarcation of the suit property, and prepare a site plan depicting the existing physical features including boundaries, structures, borewell, electricity connection, trees, if any, and any other relevant aspects found at the spot.
3. It is, however, specifically directed that the Commissioner shall not express any opinion with regard to possession, title or any other disputed rights of the parties and shall confine the report strictly to factual observations.
4. The Commissioner shall issue prior notice to all concerned parties, ensure their presence at the time of inspection, and submit the report along with the map before this Court within a period of 10 days from the date of receipt of this order.
5. The remuneration of the Commissioner is fixed at Rs. 5,000/- (Rupees Five Thousand only), which shall be deposited by the plaintiffs in the first instance and upon

such deposit, necessary commission warrant shall be issued

Order pronounced in open Court on this 3rd day of April, 2026.

Date- 03/04/2026

Place- Una

(Mr. Neeraj Kumar Yadav)

2nd Additional Senior Civil Judge, Una

GJ 01409