

KABG040009252018



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC,
AT : BELAGAVI.**

PRESENT : Smt. Preeti L. Malavalli, B.B.A.,LL.B (Hons.)
Prl. Civil Judge & JMFC,
Belagavi.

DATED THIS THE 12TH DAY OF JANUARY-2026

ORIGINAL SUIT NO.463/2018

PLAINTIFFS :

1)	Shri. Shrinath S/o. Vaiju Patil and another.
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Vs.

DEFENDANT :

1)	Shri. Shettappa S/o. Bharm Kalpatri.
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PARTIES TO I.A.NO.XIV

Applicant/Defendant :

1)	Shri. Shettappa S/o. Bharm Kalpatri.
	(By Shri. V. B. Malannavar, Adv.)

Vs.

Opponents/Plaintiffs :

1)	Shri. Shrinath S/o. Vaiju Patil and another.
	(By Shri. S. G. Kakatkar , Adv.)

1.	Provision under which application is filed	U/O.XXVI Rule 9 R/w. Sec. 151 of C.P.C.
2.	Relief sought for	Appointment of Court Commissioner
3.	The date on which the application is filed	26.07.2023
4.	Number of application	XIV
5.	The date on which the objections are filed by different opponent	10.11.2023
6.	The date on which the orders were passed on the said application.	12.01.2026

**ORDER ON I.A.NO.XIV FILED BY DEFENDANT U/O.XXVI
RULE 9 R/W. SEC.151 OF CODE OF CIVIL PROCEDURE**

The defendant has filed I.A.No.XIV U/O.XXVI Rule 9 R/w. Sec.151 of C.P.C., to appoint Assistant Director of Land Records, Belagavi as Court Commissioner to visit and make local inspection of land bearing R.S.No.22/*2 (earlier R.S.No.22 Hissa No.2) measuring 7 Guntas situated at Kangrali K.H., Belagavi and

to report the status of the land such as whether it is open land, whether it is under cultivation or not and whether is there any structure or building in the said land and if there is a building bearing GP No.1/A (VPC No.1/A) and to submit the report regarding the same, as prayed for in the application.

2. Per contra, the plaintiffs have filed objection to the said application on the ground that the application is not maintainable in the eye of law. They have further stated that this Court has framed issues by casting the burden on plaintiffs to prove their possession over suit property and as such there is no burden cast on defendant to prove the said issue. That therefore the present application is not maintainable. The parties have to prove their case by leading evidence and not by taking aid of the Court to bring evidence on record. That it is settled proposition of law that the Court has to decide the matter based on the evidence led by parties. The plaintiffs have further stated that in case of agricultural land, it has to be converted to non-agricultural use by an order of Deputy Commissioner and hence any person cannot put up permanent structure over agricultural land and then call it a non-agricultural land. As such, the relief sought by defendant cannot be granted and the application deserves to be dismissed. On these grounds, the plaintiffs have prayed to dismiss the present application with costs.

3. Heard arguments of learned counsel for defendant and learned counsel for plaintiffs. Perused the application and objection.

4. The following points arise for my consideration :

i) Whether the applicant/defendant has made out sufficient grounds to allow I.A.No.XIV filed U/O.XXVI Rule 9 R/w. Sec.151 of C.P.C. ?

ii) What order?

5. My answer to above points are as under :

Point No.1 : In the Negative.

Point No.2 : As per final order for the following:

REASONS

6. Point No.1 : The present suit has been filed by the plaintiffs seeking the relief of permanent injunction in respect of suit schedule property. It is the case of plaintiffs that they are the owners in possession of suit schedule property i.e., 7 Guntas of land in R.S.No.22/2 situated at Kangrali KH, Belagavi, but the defendant by creating false and fabricated documents, is trying to deprive the rights of plaintiffs over the suit property and he is trying to disturb the plaintiffs' peaceful possession over suit property. Per contra, it is the case of defendant that the

grandfather of present plaintiffs had executed agreement of sale in respect of suit property and handed over actual possession of suit property in favour of defendant and as such from the date of execution of agreement of sale in the year 1981, the defendant has been in actual possession and enjoyment of suit property and in the year 1981 itself, the defendant has constructed residential house in the suit property and it has been entered in Gram Panchayat records also. As such according to the defendant, the suit property is no more an agricultural land and it consists of house coming within the limits of Gram Panchayat, Kangrali KH.

7. Now in order to ascertain as to whether there is agricultural land or as to whether there is building consisting of structure over the suit property, the defendant is intending to get the Court commissioner appointed to report the status of suit property. In the affidavit annexed to the application, the defendant has stated that he is in possession of the suit property which now bears Gram Panchayat No.1/A and that it is no more agricultural land. Such being the case, it is clear that the defendant is indirectly seeking the aid of Court commissioner report to prove as to who is in possession of suit schedule property and to prove the nature of suit property. It is well settled principle of law that the Court cannot appoint Court commissioner to see as to who is in possession of suit property and it is for the parties to produce cogent evidence and to prove the said fact. The material issue in

this case is regarding the possession of suit property and for the said purpose, the Court cannot issue commission and delegate its powers to Court commissioner to decide the matter in dispute. Because, it would amount to collection of evidence if Court commissioner is appointed for the purpose of local inspection to see whether the suit property is agricultural property or whether there exists building constructed by the defendant. The decision on a material issue cannot be left to the commissioner as such issue is decided by the Court. The report of commissioner on such issue is not binding on the Court as the Court is free to arrive its own conclusion based on the evidence on record.

8. The learned counsel for defendant has relied on the decision of Hon'ble High Court of Karnataka in **Janab Nizar Ahmed Sheriff Vs. A. Kannan** reported in **1999 (3) Kar. L.J. 359**, wherein it is held that *where identity of property involved in suit for declaration of title and for injunction is disputed, the Court can issue commission to make local inspection to identify the property involved*. It is pertinent to note that in the said case before Hon'ble High Court of Karnataka the dispute was regarding exact location of property and as to whether the property of plaintiff is different from that of the defendant. But in the present case, the facts and circumstances are different and it is case of defendant that the very suit property was agreed to be sold to him by the grandfather of plaintiffs by executing

agreement of sale and he is in possession over suit property by constructing a building therein. As such, there is no dispute regarding identity of property in the present case and hence the aforesaid decision does not come to the aid of defendant. For all the aforesaid reasons, the defendant has not made out grounds to allow the present application. Accordingly, I answer **Point No.1 in the Negative.**

9. Point No.2 : For the above said discussion on Point No.1, I proceed to pass the following :

ORDER

***I.A.No.XIV filed by the applicant/
defendant U/O.XXVI Rule 9 R/w. Sec.151
of C.P.C. is hereby dismissed.***

(Dictated to the stenographer directly on computer, revised by me & after corrections pronounced in the open Court on this the **12th day of January-2026.**)

**(Smt. Preeti L. Malavalli)
Prl. Civil Judge & JMFC,
Belagavi.**