

KABG600000122016



**IN THE COURT OF THE SENIOR CIVIL JUDGE  
HUKKERI, ITINERARY COURT AT SANKESHWAR**

**DATED THIS THE 21<sup>st</sup> NOVEMBER, 2025.**

**Present- Rajanna Sankannanavar,  
B.A.LL.B.(Spl),  
Senior Civil Judge Hukkeri**

**RA No.01/2016**

**Appellant/s :**

**1. Gram Seva Co.operative Society Daddi  
Represented by its Chairman  
Sri. Basavaraj Rachappa Mungarawadi.**

**(By Sri. P.R.Chougala, Adv.,)**

**V/s**

**Respondent/s :**

**1. Kashim Mahammedhusain Sarkawas**

**( By Sri. C.S.Sanadi., Adv.,)**

**Parties in IA No.II**

**1.Gram Seva Co.operative Society Daddi  
Represented by its Chairman  
Sri. Basavaraj Rachappa Mungarawadi.**

**Applicants/Plaintiff**

**V/s**

**1. Kashim Mahammedhusain Sarkawas**

**Opponents/Respondent**

**Orders on IA No.II**

The applicant/Appellant has filed IA No.II under Order 26 Rule 9 of CPC prays to appoint an Advocate as a court commissioner for local Inspection and submit the report in respect of : below property.

- 1) ಅರ್ಜಿದಾರ ಸೊಸಾಯಿಟಿಯವರು ದಿ: 03.09.1954 ನೇ ಇಸ್ವಿಯ ದಿವಸ ಖರೀದಿ ತೆಗೆದುಕೊಂಡು ಬಿನ್ನ ಶೇತ್ರಿ ಮಲ್ಲಾ ಜಾಗಾದ ಉದ್ದ, ಅಗಲ, ವ ಚಳುಂದಿ ನಮೂದು ಮಾಡಬೇಕು.
- 2) ಎದುರುದಾರ ಈತನ ಸಹೋದರ ಹಸನಸಾಹೇಬ ಮಹದಸಾಬ ಸರಕಾವಸ ಈತನು ದಿ: 22.12.1988 ನೇ ಇಸ್ವಿಯ ದಿನಸ ಖರೀದಿ ತೆಗೆದುಕೊಂಡ ಬಿನ್ನ ಶೇತ್ರಿ ಕ್ಷೇತ್ರದ ಉದ್ದ, ಅಗಲ ಮತ್ತು ಚಳುಂದಿ ನಮೂದು ಮಾಡಬೇಕು.
- 3) ಅರ್ಜಿದಾರ ಮತ್ತು ಎದುರುದಾರು ತೋರಿಸತಕ್ಕ ಸಂಗತಿಗಳನ್ನು ನಮೂದು ಮಾಡಬೇಕು.

**2. The facts of the affidavit as follows;**

The applicant is the present of appellant society. The appellant has filed a suit in OS No.227/2010 in respect of suit schedule property before Civil Judge Sankeshwar against the respondent for relief of Declaration and Possession of suit schedule property said suit came to be dismissed on 03.12.2015. against the said Judgment and Decree present appeal has been filed. The suit schedule property has been purchased by one Rachappa Basappa Mungarawadi who is chairmen of Multipurpose Co-operative Society Daddi from one Balakrishna S/o Balaji Kulkarni under register sale deed dated 03.09.1954 from the date of purchase is in possession and enjoyment of the same. In the purchased property towards

north measuring 25X53 a Godown has been constructed. Towards south of said property there is a temporary shed has been constructed in the measurement of 25X53 and said temporary shed has been given to be respondent on the basis of permissive possession.

The respondent has filed W/S in the Trail Court. In the W/S he has taken contention that his brother namely Hassansab Mahammod Hussain Sarakavas was purchased NA land measuring 62X25 feet of Daddi village from one Vishnu Ramachandra Kulkarni under registered sale deed dated 22.12.1988. In this regard the Trail Court has not properly consider the check bandi and comes to wrong conclusion and dismiss the suit. Hence, prays to appoint an advocate and senior advocate to inspect the property which purchased by appellant dated 03.09.1954 and the property which was purchased by respondent brother and submit the report.

**3. The respondent has filed the objection objections as follows;**

In the objection he denied entire averements of the supported affidavit. The present application is not maintainable under the law and contended that, the boundaries which shown in the sale deed of appellants property is wrong and in the said sale deed of the appellants, towards south shows that, the properties of respondent is situated, instead of the properties which situated towards south of the respondent property. Hence, prays to dismiss the application.

4. Heard on IA No.II in both side.
5. Perused above pleadings and documents available on record. The following points are arises for consideration;

**POINTS**

1. Whether the applicant/appellant has made out sufficient ground to to appoint the court commissioner as claimed under I.A.No.II?
2. What Order ;
6. My answer to the above said points are as under;

Point No.1 - In the Negative,  
Point No.2 - As per the final order  
for the following;

**REASONS**

7. **Point No.1:** Wherein the appellant has filed present appeal against the Judgment and Decree dated 03.11.2013 passed in OS No.227/2010 on the file of Prl. Civil Judge Sankeshwar. In pursuance of RA notice the respoondent has been appeared. Secured TCR from the concern court. When case is listed for argument. Then on 16.09.2023 present appellant has filed present application and prays to appoint an Senior Advocate as court commissioner for measurement and boundaries of the suit schedule property and the property which purchased on 22.12.1988 by one Hasansaheb who is brother of respondent. The same is opposed by respondent. Herein, on looking to

pleadings of both the parties the question is arises for consideration as whether at this stage it is necessary for appointing the court commissioner. The answer by this court in the negative for the following reasons. Firstly the plaintiff has filed present suit for Declaration and Recovery of possession. Itself shows that, the plaintiff admits that the defendant is in possession over the suit schedule property. Then the question of appointing the a senior advocate as court commissioner is not required. Secondly, the plaintiff has filed present appeal against the respondent for set-aside Judgment and Decree dated 03.12.2013 in OS No.227/2010. Further, alleged one Hasansaheb Mahammadhussain Sarakavas who purchased property dated 22.08.1988 is not party in the present suit and his property also is not involved in the present suit. Further, it is the specific plea of plaintiff that, in his temporary shed which constructed in the part of suit schedule property the defendant is in permissive possession. Therefore, the question of appointing court commissioner does not arises. Further, on looking to the pleadings of the both parties, documents and Judgment in OS No.227/2010 the facts-in issue, involved in the present case that whether the plaintiff is owner over the suit schedule property or not on the basis of registered sale deed dated 03.09.1954 and whether, the defendant is in possession or not in the suit schedule property by way of permissive possession, these disputes can prove by way of oral and documentary evidence and the same are already on records. Further herein it is not in dispute as identification of property. Further, it is the case of the plaintiff that the defendant is in

possession over the part of suit schedule property. Therefore same can prove by way of cogent evidence. Further the court commissioner report in respect of suit schedule property as alleged by the plaintiff doesn't required since parties in the suit can establish their alleged title over the property by way of cogent evidence. Under these circumstance, the question of appointment of Court Commissioner does not arise. Therefore, the plaintiff-appellant is not entitled the relief as claimed in the IA No.II. Hence, answer to **Point No.1 in the Negative**.

8. **Point No.2**:- in the above answer to the Point No.1, then pass the following:

**ORDER**

**IA No.II under Order 26 Rule 9 of  
CPC is hereby rejected.**

*(Dictated to the Stenographer directly on Computer and typed by her and corrected by me and then pronounced in the open court on this the 21<sup>st</sup> day of November 2025)*

**Sd/-**

**(Rajanna Sankannanavar)  
Senior Civil Judge Hukkeri  
Itinerary Court at Sankeshwar**