

**IN THE COURT OF CIVIL JUDGE & J.M.F.C.,
AT SANDUR.**

Present : Md. Shaiz Chouthai,

B.A.,LL.B. (Hons.), LL.M,(M.L.)

Civil Judge & JMFC, Sandur.

Dated: 10th day of April, 2026

O.S. No. 94/2016

Plaintiff/s : Smt. C. Radhamadhavi
W/o C. Hanumanthappa,
Aged about 50 years, Agriculturist,
R/o Choranur village,
Sandur Taluk, Ballari District,
By her power of attorney holder
C. Hanumanthappa,
S/o Late C. Hulikunta Rao,
Aged about 58 years, Agriculturist,
R/o Choranur village,
Sandur Taluk, Ballari District,

(By Sri. G.M, Advocate)

V/S

Defendant/s : T. Anjinappa S/o Late T. Hulikuntapa,
and Others.

(D-1 to 6 By Sri. A.V.K. Advocate)

ORDERS ON I.A.NO.17 FILED BY THE PLAINTIFF UNDER
ORDER XXVI RULE 9 R/W SEC.151 OF CPC

1. The instant application is filed by the GPA holder of plaintiff seeking to appoint an Taluk Surveyor, Sandur Taluk as Court Commissioner to inspect plaint schedule property and to report regarding number of tamarind tree grown therein. The application is filed on 31.10.2026 when the matter was posted hearing on earlier court commissioner.

2. It is stated that the present suit is instituted seeking the relief of permanent injunction to restrain the defendants from interfering in the possession of plaint schedule property along with tamarind trees. Earlier the court commissioner was appointed to survey the suit property. After the survey the report is filed before the court. However the report did not specify number of tamarind trees located in the suit property.

3. It is submitted that the real dispute between the plaintiff and defendants is regarding in which survey number of

the land the tamarind trees are situated. The plaintiff has taken contention that the tamarind trees are located in the suit property. On the other hand the defendants have denied the presence of tamarind trees in the suit property. Therefore, according to applicant, it is necessary to know through court commissioner how many tamarind trees are situated in the suit property and the adjacent western side land. Without this fact being resolved the real dispute will not come to an end. Therefore, the applicant seeks to appoint taluk surveyor as Court commissioner to inspect the suit property and find out number of tamarind trees. If the application is allowed no hardship will be caused to other side. On these grounds the applicant prays to allow the application.

4. The learned counsel for defendants did not file any objections.

5. Heard the learned counsel for plaintiff. Perused the records.

6. The following points that arise for my consideration:

1. Whether there are grounds to allow the application ?
 2. What order?
7. My answer on the above points are as follows:-

Point No.1 : In the Affirmative

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

REASONS

8. **POINT NO.1:** According to plaintiff, the suit property consist of 51 tamarind trees out of which 7 trees fall on the boundary of the said property towards its western side. It is alleged in the plaint that the defendants illegally claiming these 7 tamarind trees situated towards western side by occupying and trespassing the suit property.

9. This court by the order Dt. 29.09.2021 appointed the Court commissioner only to conduct survey in the suit property without the details in respect of which the commissioner work

needs to be carried out. There were no specifics even in I.A. No.13. The Court commissioner / surveyor in his cross-examination admitted that he has not noted the physical features of the suit property and the existence of tamarind trees. He admit that the suit property consist of tamarind trees but, how many trees are in existence and how many trees fall towards the western boundary of the suit property is not clearly identified in the commissioner report. When the entire case of the plaintiff is based upon the alleged interference by the defendants in the use and enjoyment of the suit property and the tamarind trees situated on the western side of the said property, it is incumbent to note the physical features of the property and what it contains. In the absence of these essential features of the suit property no proper conclusion could be arrived at. In the instant case, the defendants have not objected for appointing the Court commissioner. Therefore, considering this fact and having regard to the nature of the suit and relief claimed, it is necessary to take aid of the Court commissioner to find out the essential features of

the suit land. There are certainly grounds to consider the application of the plaintiff. Hence, I answer Point No.1 **in the Affirmative.**

10. **POINT No.2:** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

I.A.No.17 filed U/O. XXVI Rule 9 R/w Sec. 151 of C.P.C. by the plaintiff is hereby allowed.

The Taluk Surveyor, Sandur is hereby appointed as Court commissioner to inspect the plaint schedule property, note the measurement and all the features of suit land including the number of tamarind trees located in the suit land and on the boundary of the said property towards its western side.

The Court commissioner shall give notice to both the parties before such inspection. **If any of the parties fail to appear on the date and time assigned by the court**

commissioner, the commissioner work shall be carried out irrespective of their absence.

The Court commissioner shall visit and inspect the suit schedule property in the presence of plaintiff and defendants.

Since this court has specified the work to be carried out of the Court commissioner, no separate memo of instruction is required.

(Dictated to the stenographer, computerized by him, corrected by me and then pronounced in the open Court, on this the 10th day of April 2026)

(Md. Shaiz Chouthai)
Civil Judge and J.M.F.C., Sandur.