

**IN THE COURT OF ADDITIONAL CIVIL JUDGE &  
JMFC, JAMKHANDI, AT: JAMKHANDI.**

**PRESENT :**  
**SHRI ARASHAD ANSARI,**  
***B.Com, L.L.M.,***  
**Addl. Civil Judge & JMFC,**  
**Jamkhandi.**

**Dated this 27<sup>th</sup> day of October - 2023**

**O.S. No.204/2021**

1. Shri.Bhimappa S/o Devappa @ Devanna Gurav,  
Age: 50 years, Occ: Agriculture,  
R/o Madhurkhandi, Tq: Jamkhandi,  
Dist: Bagalkot and Others.

**..... Plaintiffs.**

**(By Shri.R.M.D., Advocate)**

**Vs.**

1. Shri.Sivaram S/o Dundappa Nandi,  
Age: 65 years, Occ: Agriculture,  
R/o Madhurkhandi, Tq: Jamkhandi,  
Dist: Bagalkot and Others.

**..... Defendants.**

**(D-1 - by Shri.R.H.K., Advocate)**

**(D-2 & 3 - by Shri.R.N.D., Advocate)**

**I. A. No.I**

1. Shri.Bhimappa S/o Devappa @ Devanna Gurav  
and Others,

**..... Applicants/Plaintiffs.**

**Vs.**

1. Shri.Sivaram S/o Dundappa Nandi  
and Others,

**.....Opponents/Defendants.**

\* \* \*

Sl. No.	Details	Particulars
1	Provision under which the application is filed	Under Order 26 RULE 9 R/W Section 151 of CPC
2	Relief sought for	Appointment of Court Commissioner
3	The date on which the application is filed	07-07-2022
4	Number of the applications	I.A.No.I
5	The date on which the objections are filed by the different opponent/s	18-08-2022
6	The date on which the orders were passed on the said application/s.	27-10-2023

**ORDERS ON I.A. No.I FILED BY  
PLAINTIFF/APPLICANT UNDER ORDER 26 RULE 9  
R/W SECTION 151 OF C.P.C.**

This application is filed by plaintiffs/applicants seeking permission to appoint court commissioner i.e., Assistant Director of Land Records, Jamkhandi to measure the suit lands and land purchased by the opponent and fix the boundaries so as to know the exact situation as per Madhurkhandi gram map of year 1831 and 1976 to decide the matter once for all.

2. On the other hand defendants No.2 and 3 filed objections and stated that, appointment of commissioner is not necessary at this stage. The appointment of commissioner is to collect the evidence which is not allowed and prayed for rejection of the same.

3. Heard. Perused the material placed before this court.

4. The points that arose for my consideration is as under :

- 1) Whether the application filed by the plaintiffs/applicants deserves to allowed as prayed?
  - 2) What Order?
5. My findings to the above points is as under:

**Point No.1:-** In the Affirmative,

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

**: R E A S O N S :**

6. **Point No.1:-** This present suit is filed by the plaintiffs for the relief of possession. It is submitted that land bearing R.S.No.201 of Madhurkhandi village was

measuring then 16 acres 33 guntas, viz Inam land allotted to our family for the sake Hanamanth Devara Pooja. In the year 1981 the land bearing R.S.No.201/2 and 201/3 were granted by Land Tribunal to deceased Devappa Venkappa Gurav as per M.E.No.4500. At the same time land bearing R.S.No.201/4K and 201/5K were granted by the Land Tribunal, Jamkhandi to Hanamant Govind Gurav as per M.E.No.4501. Plaintiff No.3 also purchased part of land bearing R.S.No.201/4 measuring 03 acres 18 guntas under M.E.No.4935 which touches towards southern side of Kudachi to Jamkhandi road. It is further submitted that defendants purchased land bearing R.S.No.201/1 and it has been renumbered as R.S.No.201/7 under M.E.No.4704. The father of defendants purchased a land bearing R.S.No.203/2 measuring 04 acres 28 guntas. The defendants high handedly and illegally fabricated records in the survey office on political influence. But in the Madhurkhandi gram map they could not commit mischief which is very

much clear. It is further submitted by applicant that land bearing R.S.No.201 measuring 16 acres 33 guntas is used by himself and his ancestor from many decades and this fact is personally known to the defendants. The plaintiffs/applicants requested defendants to measure the suit land, but defendant have no mood as they were encroached to the extent of 20 guntas since from 2 years. Therefore technical persons like A.D.L.R., Jamkhandi is appointed to measure the entire land bearing R.S.No.201 including the lands purchased by the defendants, the exact encroachment made by the defendant will known to this court. This will help to this court to dispose of this case as early as possible. It is also submitted that the encroachment if any cannot be decided on the basis of oral evidence of either parties and technical person like A.D.L.R., Jamkhandi is proper to measure the lands as per the gram map prepared from time immemorial and on these grounds prayed to allow this application.

7. On the contrary it is the case of the defendant is that, the plaintiffs have no right, title and interest in the disputed property. The plaintiff have to prove that they are entitled for the possession of the property claimed by producing the documents and adducing cogent evidence. In view of WP No. 6370/2012, commissioner shall not be appointed for collection of evidence. The stage is for hearing on IA and plaintiff evidence. Without leading evidence such application cannot be filed. It is only a delay tactics and prayed for rejection of application by imposing costs.

8. On going through the case of the plaintiff and defence, there is a dispute regarding the measurements of their lands and seeking possession. According to plaintiff the defendant have encroached about 20 guntas or more in their land. The defendants have fabricated records in the survey office due to political influence. They could not fabricate in Madhurkhandi Gram map of 1831 or of 1977. The property of RS 201 total extent is

touching the Kudachi - Jamkhandi road and same was enjoyed by their ancestors with the knowledge of defendants. The defendants intentionally not ready to get measured their lands. The commissioner can be appointed if any technical aspect is involved in deciding the issue of the case to arrive at just conclusion of the suit along with other cogent evidence. The applicant sought appointment of commissioner to measures the lands of plaintiff and defendants with taking help of Madhurkhandi Gram map. The commissioner can inspect the land and if necessary take the assistance of this map while reporting. So all this aspects and objections can be considered at the time of accepting the report. Now it cannot be said that, the appointment of commissioner is amounting to collection of evidence. This aspect is observed and held in a decision **W.P.NO.201274/2022 (GM-CPC), Sri Shadaksharappa S/o Veranna -vs- Kumari Vijayalaxmi D/o Pampanna and others, as under:**

*“At what stage of the proceeding in a suit, the application can lie? As could be easily noticed from the provision, the provision is not ‘stage’ centric. Thus the provision can be invoked either before the commencement of the trial or after. If the application is filed before the commencement of the trial, the court having regard to the pleadings and records may allow such application before the commencement of the trial”.*

*“The burden of proving the alleged encroachment is on the plaintiff. Instead of voluminous oral evidence, if the petitioner seeks to prove his contention relating to encroachment through the report of the Commissioner, the prayer for local inspection should be willingly granted unless there are justifiable reasons for the court to take a view that the local inspection is a futile exercise”.*

**In *Southern Command Mes Employees Co-Op. Credit Society Vs. V.K.K.Nambiar (1988) 2 SCC 292 = AIR 1988 SC 2126.* it is held that,**

*“No Court can prevent a party from adducing the best evidence, if such evidence can be gathered with the help of a Commissioner. Refusal of request of the party to appoint a Commissioner to make local investigation in an appropriate case may amount to failure to exercise jurisdiction vested in the Court. Such evidence enables the Court to properly and correctly understand the issue, assess the evidence on record and clarify any point which is of doubtful nature. It also helps the Court in deciding the question in controversy before it relating to identification, location, measurement, encroachment etc. of the property in dispute”.*

9. In view of the reasons discussed above and observation made in above decisions I am of the opinion that it is found just and proper to appoint the commissioner, which is necessary in arriving at just conclusion of the suit with help of report and cogent evidence to be led by the parties, to decide the question in issue to meet the ends of justice. Hence, for the

reasons discussed above I answer point No.1 in the '**Affirmative**'.

10. **Point No.2:-** For the reasonings and findings given to Point No.1, I proceed to pass the following :

**: O R D E R :**

I. A. No.I filed under Order XXVI Rule IX of CPC is hereby allowed.

The ADLR, Jamkhandi is appointed as court commissioner and directed to submit the report as per memo instructions to be filed by the parties before executing the work. The commissioner fees is fixed at Rs. 2000/-.

No order as to costs.

*(Dictated to the Stenographer directly on computer and typed by him, and corrected, printout taken, signed by me and then pronounced in the open court on this the 27<sup>th</sup> day of October - 2023)*

Sd/-  
**(Arashad Ansari),**  
**Addl. Civil Judge & JMFC,**  
**Jamkhandi.**