



**IN THE COURT OF I ADDL SENIOR CIVIL JUDGE &
JMFC, DEVANAHALLI.**

Present: Sri Lokesha M.G., B.A.L.,LL.B.,

O.S.NO.251/2016

Dated this the 13th day of February, 2026.

PLAINTIFF: Smt. Lakshamma
(By Advocate Sri. N.R.)

V/s.

DEFENDANT: Sri. K.M.Srinivas
(By Advocate Sri. K.T.N.)

i.	Provision under which the application is filed	Order 26 Rule 9
ii.	Relief sought for	To Appoint Court Commissioner
iii.	The date on which the application is filed	01.06.2023
iv.	Number of the application	8
v.	The date on which the objections are filed by different opponents	15.07.2023
vi.	The date on which the orders were passed on the said application	13.02.2026



ORDER ON IA.NO.VIII

This application is filed by the plaintiff U/o.26 Rule 9 of C.P.C to appoint Court Commissioner to measure the plaintiff property and to submit the report.

2. It is stated in the accompanying affidavit that plaintiff has filed the suit for the relief of Declaration and Permanent Injunction in respect of suit property. It is stated that her property actual dimension available at the spot is 2 Acres. She is in physical possession and enjoyment of the property. To decide the case on merits, it is necessary to appoint Commissioner. Defendant obstructed the peaceful possession of plaintiff suit property. She has already produced documents. Plaintiff is the absolute owner in possession of suit property. All the documents are standing in the name of plaintiff. Application is filed stating encroachment. Defendant has no right over the suit property. It is necessary to hold local investigation to elucidate the matter in dispute and to prepare possession sketch and to submit report. Accordingly, appointment of Commissioner who is



surveyor to inspect the spot is necessary. Accordingly it is prayed to allow the application.

3. The defendant filed objection stating that application is not maintainable. There is no necessity to measure the land by appointing Commissioner. No Commissioner can be appointed to collect evidence. Plaintiff claims that she has produced all the documents and they are concocted for the purpose of the suit. She has not stated as to how her father derived title to suit property. The plaintiff has failed to prove the case in O.S.No.512/2007 and it was dismissed. Accordingly, it is prayed to dismiss the application.

4. Heard the both and perused the materials on record.

5. The points that arise for consideration.

1. Whether the plaintiff has made out the grounds to appoint the Court Commissioner ?

2. What order ?



6. My answers to the above 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** :- The suit is filed by the plaintiff for the relief of Declaration to declare that she is the absolute owner in possession and enjoyment of suit property and for the relief of Permanent Injunction restraining the defendant from dispossessing the plaintiff half portion in the plaint schedule property. Schedule property is Sy.No.131/16 measuring 2 Acre. Plaintiffs claims that she was Gifted the suit property by her father Munishamappa in the year 2006. From the date of Gift Deed, plaintiff has been in possession and enjoyment of suit property. Her name was incorporated in the revenue documents. Defendant has no right over the suit property and he has tried to attempt and trespass and interfere with the suit property by making false claim. It is also stated about filing of O.S.No.512/2007 for the partition and it was dismissed. In the said suit, present suit property was also included.



8. Present application is filed by the plaintiff to appoint Commissioner to measure the property and to submit report. In the affidavit, it is stated that actual dimension is 2 Acres. In the plaint schedule also, it is stated that the suit property measures 2 Acres. On perusal of entire plaint averments, I have not found anything with respect to encroachment and with respect to any boundary dispute. It is the case of the plaintiff that she has got suit property through Gift Deed from her father. It is stated that she is in continuous possession of suit property. Defendant has no right over the same and he has interfered with the possession of suit property. It is her burden to prove the same. This is a title suit. She has to produce documents to prove her ownership. She has also pleaded that she is in lawful possession of suit property. It is also her burden to prove the same. In the application, it is sought to prepare possession sketch. For such purpose, Commissioner can't be appointed. The advocate for defendant has produced the documents which are Tippani, Atlas, Hissa Tippani, Sketch, Akarband, Karda. They support the contentions of defendant. On perusal of these documents, I am of the opinion that Commissioner



can't be appointed for the sought relief. There are no valid grounds in the application.

9. Advocate for plaintiff has produced the Judgments in **1. Writ Petition No.201274/2022 in between Sri. Shadaksharappa S/o Veranna Vs. Kumari. Vijayalaxmi D/o. Pampanna & Others, 2. Writ Petition No.18617/2012 in between Sri. Y.Mallikarjuna Vs. Sri. V.H. Kotresha & Another and 3. Writ Petition No.25584/2014 in between Doddegowda Vs. Shri. Chikkannachari.** It is held that the appointment of Commissioner can be in any kind of suit. But, it is to elucidate the matter in dispute and then application for local inspection can be allowed. Only on the basis of nature of suit, application can't be refused. The guidelines are also stated in the said Judgment. The illustration are also given. The present application doesn't come under the said illustration. Apart from this the plaintiff has not stated as to why Commissioner is to be appointed. By considering the facts and circumstances of the case, I am of the opinion that it is not necessary to appoint Commissioner in this case. Because measurement is not



in dispute, boundary is not in dispute and it is not stated about encroachment by defendant. Hence, plaintiff can't take advantage of the principles laid down in the said Judgments. Hence, I hold that objection is sustainable. There are no grounds in the application. Accordingly, I answer Point No.1 in the "**NEGATIVE**".

10. POINT NO.2 :- As per the above discussion, I pass the following;

ORDER

I.A.No.8 filed by the plaintiff
under order 26 Rule 9 of C.P.C is
hereby dismissed.

(Dictated to the Stenographer, transcribed and computerized by her, transcript revised, corrected and pronounced by me, in the Open Court, dated this the **13th** day of **February, 2026**).

Sd/-
(Lokesha.M.G.)
I Addl Sr.Civil Judge & Jmfc.,
Devanahalli.