

**IN THE COURT OF THE ADDL CIVIL JUDGE & JMFC,
AT DODDABALLAPURA**

: PRESENT :

**Smt. Preethy K., LL.M.,
ADDL. CIVIL JUDGE & JMFC.,
At DODDABALLAPURA**

DATED THIS THE 17th MARCH, 2026

O.S.No.504/2024

PLAINTIFFS:-

1. Sri. Muniyappa

S/o Late Muniyellappa,
Aged about 80 years,

2. Sri. Rajappa

S/o Late Muniyellappa,
Aged about 67 years,

3. Sri. Periyanna

S/o Late Muniyellappa,
Aged about 57 years,

All are R/at Banavathi Village,
Sasalu Hobli,
Doddaballapura Taluk,

Also at 282, thirumagondanahalli,
Attibele Hobli,
Anekal Taluk.

-V/s-

DEFENDANTS :-

1. Sri. G.N. Ramanjinappa

S/o Late Narayana Swamy,
Aged about 50 years,

2. Sri. Ravi Kumar

S/o Late Narayana Swamy,

Aged about 45 years,

Both are R/at Gandrajapura Village,
Melekote Post,
Tubugere Hobli,
Doddaballapura Taluk,
Bengaluru Rural District.

PARTIES TO I.A. NO.II

Applicant : Sri. G.N. Ramanjinappa & another
defendants
-V/s-

Opponent : Sri. Muniyappa
plaintiffs

ORDER ON IA No.II

I.A No. II is filed by the defendants U/Order 26 Rule 9 of CPC to appoint Taluk Surveyor to measure the property of defendant by way of Haddubastu as per sale deed dated 08.10.2024.

2. In the affidavit annexed to the application it is stated that, the plaintiff in his plaint alleged that, the defendants encroached the property of the plaintiff. It is denied that, the defendants encroached and interfered with the possession of the plaintiff. It is further stated that, the plaintiff taking advantage of order of this court is troubling the defendants every day. This court opined that, the possession and property of the parties are

to be measured to identify the properties. It is necessary to measure the property and also identify the encroachment if any. The defendant had filed application for Haddubastu of his land on 13.10.2024 and concerned Authorities refused the measure the land claiming the pendency of the suit. Hence the application.

3. The counsel for the plaintiff filed objection and contends that, the application is not maintainable in law or on facts. The entire contents of the affidavit annexed to the application is denied as false. It is further contended that, the suit is for bare injunction and not a declaratory suit. The parties herein have to establish their possession over the suit property as on the date of the suit by leading documentary and oral evidence. The defendants have not approached this court with clean hands and suppressed material facts. The application is ill motivated and intentionally to harass the plaintiffs and to delay the proceedings. The plaintiff has to lead evidence and matter is posted for issues. At this juncture the application is not maintainable. The appointment of court

commissioner in this case does not arise at all. The defendant has to establish his claim by documentary and oral evidence and not by asking for commissioner to inspect the spot and collect the evidence. Hence sought for dismissal of the application.

4. Heard and perused.

5. The following points arise for consideration.

1) Whether the defendants have made out grounds to appoint court commissioner?

2) What order?

6. The above points are answered as under:-

Point No.1 : In the Affirmative

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

REASONS

7. Point No.1: The suit is for permanent Injunction. In this application the defendant is seeking for appointment of Court Commissioner to measure the property of defendant by way of Haddubastu. In the suit the plaintiff claims that, he is in possession of the suit schedule property, the suit schedule property is 3 acre 0.1 guntas. The defendant herein contends that, the suit property is only 2 acre 25 guntas and due to wrong entry of the measurement of the property it is shown as 3

acre 0.01 guntas. The defendants deny the plaintiffs title or interest over 3 acre 01 guntas. The defendant also claim that, they are in possession of the land bearing Sy No.430 measuring 3 acres. Hence the defendant herein specifically contends that, the extent of the suit property as claimed by the plaintiff is improper.

8. Further, the defendants contend that, the original grantee of the land i.e., Konerappa was allotted only 2 acre 25 guntas and it is wrongly entered as 3 acre 1 guntas in the RTC. Hence on considering the dispute involved in the suit it appears to this court that, the measurement of the properties of both plaintiff and defendants would aid in adjudicating the matter effectively. The primary dispute is about extent of land and it's possession. The defendants also state that, they had already applied for Haddubastu and due to pendency of the suit, the concerned officials resisted from measuring the land.

9. Further, the plaintiff herein seriously object for appointing court commissioner for measuring the land. The plaintiff contends that, since suit is for permanent injunction measurement of the property is not necessary. The learned

counsel for plaintiff relied upon a decision of Hon'ble High Court of Karnataka in Puttappa V/s Ramappa, wherein it is held that, in a suit for injunction, the question about possession would not be determined by court commissioner. In the case on hand, the dispute involved in the suit is not only about the possession of the land but, also about its extent. The Hon'ble High Court of Karnataka in **Sri.Shadaksharappa v/s Kumari Vijayalaxmi**, reported in **(2023) 1 KCCR 637** at para 20 has given the following guidelines to be followed while considering an application under Order XXVI Rule 9 and 10;

20. In the backdrop of the discussions made above, this Court cannot lose sight of the fact that in a large number of suits before the Trial Court, the applications are filed for the appointment of a Commissioner. In other words, this is one of the frequently invoked provisions of the Code. For this reason, this Court deems it desirable to summarise the broad guidelines that can be followed while exercising the power under Order XXVI Rules 9 and 10 of the Code of Civil Procedure.

a) The power of the Court to appoint the Commissioner for local inspection or any other purpose provided in Order XXVI of the Code is discretionary. However, the said discretion is guided by not only Order XXVI Rules 9 and 10 of the Code but also the provisions of the Indian Evidence Act dealing with relevancy, expert opinion, and the burden of proof.

b) The discretion to exercise the power under Order XXVI of the Civil Procedure Code is not governed by the form of the suit. The Court can appoint the Commissioner in any kind of suit, provided a report of the Commissioner under Order XXVI of the Code is necessary for elucidating the matter in dispute.

c) *The issue framed in the suit, or where the issue is not yet framed, the pleadings which give rise to issue/s and the documents placed on record would be a guide to ascertain the 'matter in dispute' referred in Order XXVI Rule 9 of the Code.*

d) *The power to appoint the Commissioner for local inspection or scientific investigation/expert's opinion can be invoked even suo motu by the Court, without there being an application by either of the parties, if the Court deems it appropriate to secure the report of the Commissioner. However, the appropriate reasons must precede the order appointing the Commissioner. And such orders are to be passed only after hearing the parties before it.*

e) *The Commissioner can be appointed either before or after the commencement of the trial. However having due regard to the nature of the controversy, if the report is essential for elucidating the matter in dispute, it is desirable to have the local inspection before the commencement of trial as it is likely to reduce the volume of oral evidence in a given case.*

f) *In addition to the report, having regard to Order XXVI Rule 10 of the Code, the evidence taken by Commissioner reduced in writing can also be taken on record and examined by the Court while considering the report.*

g) *The report of the Commissioner is not conclusive proof of what is stated therein. The report is only a piece of evidence, that the Court has to examine based on the other materials on record.*

h) *Report of the Commissioner need not be formally marked for being considered as evidence. Once submitted to the Court, the report is part of the Court record and can be looked into by the Court.*

i) *The Court may in its discretion examine the Commissioner on any matter concerning the report. There is no compulsion to examine the Commissioner. However, if the objection is filed to the report, and the party filing objection seeks to examine the Commissioner then the Commissioner should be examined. In either case, once the Commissioner is examined, the Court having due regard to the evidence, may reject or accept the report in its entirety or in part, provided there are materials to*

justify such a finding on the report. In appropriate cases, the merit of the report can be considered at the final hearing. While considering the report at the final hearing, if the Court finds that the report is erroneous and fresh commission is required, the Court may pass appropriate order in this regard.

j) If the Court is dissatisfied with the proceedings of the Commissioner 'as found in Order XXVI Rule 10 (3), it may direct further inquiry depending on the facts. As a matter of caution, it is clarified that examination and order under order XXVI 10 (3) are only to verify if the Commissioner has followed the proper procedure while carrying out his task.

k) The person who has filed an objection to the report has the option of cross-examining the Commissioner to substantiate his objections or even without cross-examination, it is open to establish that the report is inadmissible in evidence.

Thus, the guidelines in the above decision has clearly laid down that, even in a suit for permanent injunction Commissioner could be appointed if the report is necessary to elucidate the dispute involve in the suit. Hence, on considering the dispute involved in this suit, it appears to this court that appointing court commissioner to measure the land of both plaintiff and defendant would aid in adjudicating the dispute effectively. Hence, the point is answered in **Affirmative**.

9. Point No.2: For the above discussions, this court proceeds to pass the following:

ORDER

I.A. No.II filed by the plaintiff U/o 26
Rule 9 of CPC is hereby allowed with cost.

The Taluk surveyor, Doddaballapur is hereby appointed as court commissioner.

The court commissioner shall measure the property of plaintiff and defendant and submit report about extent of both properties and also shall submit report about any encroachment.

(Dictated to the stenographer directly on computer and after corrections, signed and pronounced by me in open Court on this 17th day of March, 2026)

(PREETHY.K)
Addl.C.J & JMFC.,
Doddaballapura