

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
JMFC., AT GOWRIBIDANUR**

Dated this 17th day of April 2026

:: PRESENT::
Smt. PUSHPA .D
B.Com, L.L.B.,

Addl. Civil Judge & J.M.F.C,
Gowribidanur

ORIGINAL SUIT NO.172/2015

PLAINTIFF : Sri. G.N. Lakshmaiah & another

// Versus //

DEFENDANT : Sri. Gangadharappa

ORDERS ON I.A. FILED BY THE PLAINTIFF UNDER
ORDER XXVI RULE 9 READ WITH SECTION
151 OF C.P.C.

The present application is filed by the legal representatives of the plaintiff, seeking appointment of a Court Commissioner to conduct a local inspection of the land bearing Sy.No. 247, situated at Gotakanapura Village, Gowribidanur Taluk. The such an inspection is necessary to ascertain the present physical status of the property, its accurate boundaries, and proper division. It is contended that the appointment of a Court Commissioner would assist this Hon'ble Court in effectively adjudicating the matter and would be in the interest of justice and equity.

2. The plaintiff has sworn to the accompanying affidavit stating that the suit is filed for the relief of declaration and permanent injunction against the defendants. It is contended that

the plaintiffs have acquired the suit schedule property under a registered partition deed dated 23.04.1968. It is further stated that the Tahasildar of Gowribidanuru Taluk conducted a phodi (land division) in respect of the said land; however, the plaintiffs contend that the same is incorrect and not in accordance with their rightful share. That the phodi was carried out without proper inspection and contains several inaccuracies and inconsistencies. It is further contended that no extent of land in Sy.No. 247 belonging to the plaintiffs has been lawfully acquired, and the plaintiffs are in peaceful possession and enjoyment of the suit schedule property. However, due to the incorrect phodi, the plaintiffs' land has been wrongly reflected in the acquisition process without proper notice. Hence, it is necessary to appoint a Court Commissioner to conduct a local investigation in order to ascertain the actual physical status, current use, accurate boundaries, and proper division of the land. Further state that the appointment of a Court Commissioner would facilitate a just and fair adjudication of the case and would also prevent unnecessary delay in the proceedings. Hence, prays to allow the application.

3. The defendant has filed detailed objections contending that the application filed by the plaintiff is not maintainable either in law or on facts, and that the affidavit filed in support of the application is false. The defendant states that the father of the plaintiff, namely Poojari Narayanappa, and one Nagappa (father of the defendant) were the sons of late Gangappa. The said Narayanappa and Nagappa partitioned their joint family properties under a registered partition deed dated 23.04.1968 and the properties were divided into 'A' and 'B' schedules. The 'A' schedule properties were allotted to the share of the plaintiff's father, while

the 'B' schedule properties were allotted to the share of the defendant's father. That Sy. No. 247 measures a total extent of 1 acre 39 guntas, and the same was equally divided between the plaintiff's father and the defendant's father, each being allotted an extent of 0-39.08 guntas. Accordingly, both parties were in possession and enjoyment of their respective shares. That the plaintiff's father has since deceased, leaving behind his wife Nanjamma and two sons, who are the present plaintiffs. It is contended that an extent of 0-28 guntas out of Sy. No. 247 was acquired for the formation of a bypass road during the year 1994-95, comprising 0-14 guntas each from the share of the plaintiff's father and the defendant's father. At the relevant time, the plaintiff's father had already expired. The compensation amount of Rs. 83,741/- was received jointly by Nagappa and Nanjamma on 26.11.1999 and the same was equally shared between them. After such acquisition, the remaining extent in possession of each branch was 0-25.08 guntas. Consequently, the land was re-numbered as Sy. Nos. 247/1, 247/2, and 247/3, measuring 0-25.08 guntas, 0-28 guntas, and 0-25.08 guntas respectively. Further, his father Nagappa was in possession and enjoyment of Sy. No. 247/3 to an extent of 0-25.08 guntas, and that the plaintiffs have no manner of right, title, or interest over the said portion, as their claim is confined only to Sy. Nos. 247/1 and 247/2. The defendant further states that the evidence of the plaintiffs has already been completed and the matter is presently posted for cross-examination of DW-1. At this stage, the present application is not maintainable and is liable to be rejected. It is contended that the application is mala fide and misconceived. No prejudice will be caused to the plaintiffs if the application is

dismissed; however, if the same is allowed, it would cause serious prejudice and injustice to the defendant.

4. Heard the learned counsel for the plaintiff and defendant. Learned counsel for the plaintiff files written arguments. Perused the materials on record, the following points will arise for my consideration:

POINTS FOR CONSIDERATION

1. *Whether the application filed by the plaintiff under Order XXVI Rule 9 of C.P.C. deserves to be allowed?*

2. *What Order?*

5. My findings to the above points are as under:

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

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

:: R E A S O N S ::

6. **Point No.1** :- I have perused the contents of the application, the accompanying affidavit, and the pleadings in the main suit. The present suit is filed seeking the relief of declaration and permanent injunction. By way of the present application, the plaintiff has sought the appointment of a Court Commissioner to conduct a local inspection of the land bearing Sy. No. 247 situated at Gotakanapura Village, Gowribidanuru Taluk. The main contention of the plaintiff is that such an appointment is necessary to ascertain the actual status, accurate boundaries and correct division of the suit schedule property, as the phodi conducted by the Tahasildar is alleged to suffer from several inaccuracies and inconsistencies. Per contra, the defendants contend that the

properties have already been partitioned between the parties and that both the plaintiffs and defendants are in possession of their respective shares. It is further contended that an extent of 0-28 guntas in Sy. No. 247 was acquired for the formation of a bypass road during the year 1994-95, comprising 0-14 guntas each from the shares of the plaintiff's father and the defendant's father, who were each holding 0-39.08 guntas. The compensation for such acquisition was received by Nagappa and the plaintiff's mother, Nanjamma. After such acquisition, the remaining extent with each is stated to be 0-25.08 guntas, making a total extent of 1-11 guntas. These rival contentions clearly indicate that there exists a serious dispute between the parties with regard to the extent, identity, and division of the suit schedule property.

7. It is a well settled principle of law that a Court Commissioner cannot be appointed for the purpose of collection of evidence, but to assist the court for arriving at a just and proper decision of the case. Admittedly, this is a suit for declaration and permanent injunction where there exists a serious dispute between the contesting parties regarding the extent, identify and division of the suit schedule property claimed by the plaintiff to be in their possession. The appointment of a Court Commissioner in this case at this stage appears to be necessary in order to completely and effectively adjudicate upon the real controversy between the parties. Moreover, the evidnece of plaintiff's side already concluded and the report of the Court Commissioner will be read in light of, and in addition to, the evidence put forth by the parties. The report will not by itself be the sole document to be relied upon at the time of deciding this matter. Therefore, I am of the opinion that if this

court appoints court commissioner, both parties will benefit by the outcome of the court commissioner's report and the report will aid the court to find the real controversy between the parties. Hence I answer point No.1 in the **Affirmative**.

8. **Point No.2**:- For the above reasons given on the Point No.1, this Court proceeds to pass the following:

O R D E R

I.A. filed by the Plaintiff under Order XXVI Rule 9 of C.P.C., is hereby allowed.

Consequently, the Taluk Surveyor of Gowribidanur Taluk is hereby appointed as Court Commissioner to ascertain about the current status, accurate boundaries and correct division of the suit schedule property and submit the report with regard to the actual position of the suit schedule property

The court commissioner fee is fixed at Rs.5,000/-.

Both the parties are at liberty to file memo of instructions 03.07.2026.

Sd/-
Addl.Civil Judge and J.M.F.C
Gowribidanur