

IN THE COURT OF THE PRL CIVIL JUDGE & JUDICIAL
MAGISTRATE FIRST CLASS AT HIRIYURU

Present: - Shri. Shridhara. H. D.

B.A. LL.B.,
Prl. Civil Judge & JMFC.,
Hiriyur, Chitradurga

Dated this the 3rd day of March 2026

O. S. No.48 / 2017

PLAINTIFF/S:	Vasanthkumar,
	V/S
DEFENDANTS:	Rathnamma & Others
	I.A. No.XI
Applicant : (Plaintiff)	Vasanthkumar,
	V/S
Opponent/s: (Defendants)	Rathnamma & Others
i. Provision under which the application is filed	U/ order XXVI Rule 10 R/w Sec.151 of CPC
ii. Relief sought for	Appointment of Court Commissioner
iii. Stage on which the application is filed	Arguments
iv The date on which the application is filed	30.01.2026
v Number of the applications	I.A. No.XI
vi The date on which the objections are filed by opponents	19.02.2026
vii The date on which the orders were passed on the said application	03.03.2026

(Shridhara. H. D.)
Prl. Civil Judge & J.M.F.C.,
Hiriyuru.

ORDER ON I.A. No.XI

This is an application filed by the plaintiff under Order XXVI Rule 10 of C.P.C., seeking appointment of an Advocate as Court Commissioner, assisted by a PWD Engineer, to survey and measure the suit schedule property of the plaintiff and also the properties of the defendants, in order to ascertain the alleged encroachment.

2) On service of notice the defendant No.2 has filed objections to the IA. No.XI.

3) Heard both the sides and peruse the I.A. No.XI and documents available before this Court.

4) The following points arise for consideration of this Court:-

POINTS

1) Whether the plaintiff has made out a grounds to allow the application?

2) What order?

5) The findings of this Court to the above points are as under:-

Point No.1 :- In the Negative,

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

:- REASONS -:-

6) **Point No.1**:- The plaintiff contends that he has

filed the suit for declaration of title and recovery of possession of the encroached portion of the suit schedule property. It is stated that the suit property was in existence prior to the alleged allotment of sites to the defendants by the Gram Panchayat authorities. According to him, though the defendants claim allotment of sites, they have encroached upon a portion of his property and have put up construction thereon.

7) The plaintiff submits that the defendants have denied both his title and the alleged encroachment. Therefore, in order to ascertain the actual position on the spot and to determine whether there is any encroachment, it is necessary to appoint a Court Commissioner with technical assistance. It is contended that such local investigation would assist the Court in effectively adjudicating the dispute.

8) Defendant No.2 has filed detailed objections contending that the application is not maintainable. It is contended that a Court Commissioner cannot be appointed for the purpose of collecting evidence on behalf of the plaintiff. The burden lies entirely upon the plaintiff to prove his title, identity of the property and alleged encroachment by leading proper evidence. The Advocate Commissioner is not a technical survey authority and cannot be appointed to measure the land. Even permitting assistance of a PWD

Engineer would amount to creating technical evidence in favour of the plaintiff. On these grounds, dismissal of the application is sought.

9) It is not in dispute that the suit is pending from the year 2017 and that the evidence of both parties has been completed. The matter was posted for arguments. At this stage, the present application has been filed. No satisfactory explanation is offered by the plaintiff for not seeking appointment of Commissioner at an earlier stage.

10) It is well settled that appointment of a Commissioner under Order XXVI CPC is discretionary and intended to assist the Court in clarifying any factual aspect which cannot conveniently be brought before the Court by other evidence. However, such appointment cannot be made for the purpose of collecting evidence or to fill up lacuna in the case of a party.

11) In a suit for declaration of title and recovery of possession, the burden lies squarely upon the plaintiff to establish his title, the identity and boundaries of the suit schedule property, and the alleged encroachment. These matters must be proved by the plaintiff through admissible evidence. A Commissioner cannot be appointed to determine title or to find out whether encroachment has taken place.

12) Further, the specific prayer in the application is to survey both the suit schedule property and the properties of the defendants. The properties of the defendants are not the subject matter of the present suit. The relief sought in the plaint is confined only to the suit schedule property. Therefore, directing survey of the defendants' properties would travel beyond the scope of the suit and beyond the pleadings. Moreover, measurement of land and fixation of boundaries fall within the domain of competent survey authorities under the relevant land laws. An Advocate Commissioner is not a statutory survey authority. Appointment of an Advocate to conduct technical measurement with the assistance of a PWD Engineer, particularly at this stage after closure of evidence, would amount to creating evidence in favour of the plaintiff.

13) Considering the belated stage of the application, the nature of relief sought, and the settled principles governing appointment of Commissioner, this Court is of the opinion that the plaintiff has not made out sufficient grounds to allow the application. Hence, this court proceed to answer point No.1 in the **Negative**.

14) **Point No.2:** For the foregoing reasons, this court proceed to pass the following:-

::: O R D E R :::

The I.A. No.XI filed by the plaintiff
under Order XXVI Rule 10 of CPC is
hereby dismissed.

(Directly dictated to the stenographer on the desk-top computer, typed
by him on-line, corrected, signed and then pronounced by me in the
open Court on this the 3rd day of March 2026)

(Shridhara. H. D)
Prl. Civil Judge and JMFC,
Hiriyuru.