

KACM200000392021



IN THE COURT OF THE SENIOR CIVIL JUDGE,
AT: KADUR

Before: **Sri. IRFAN,**
B.A., L.L.B.,
Senior Civil Judge & JMFC.,
Kadur, Chikkamagaluru District.

Dated this the 7th day of August - 2024

OS No.12/2021

Plaintiffs:

1. Sri. K.C. Ramesh,
S/o Late K.B. Chandrashekhar,
Aged about 44 years,
Agriculturist,
2. Smt. C. Malathi,
D/o Late K.B. Chandrashekhar,
Aged about 51 years,
House-hold,
3. Sri. K.C. Hemanthkumar,
S/o Late K.B. Chandrashekhar,
Aged about 49 years,
Agriculturist,

(By: Sri.S.N. Girish, Advocate)

V/s

- Defendants:
1. Town Municipal Council,
Represented by its Chief Officer,
Kadur Town at and Post,
Kadur Taluk.
 2. Assistant Executive Engineer,
National Highway Sub Division (N.H-173),
Belur Town at and Post,
Hassan District.
 3. M/s J.M.C Constructions Pvt., Ltd.,
(LMCCPL) JV, Sub Division,
Rep. By: CHVN Reddy,
Class-I Contractor, Bypass Road,
Chikkamagaluru Town at & Post.

(D-1 by: Sri. B. Shivakumar, Advocate)
(D-2 by Learned Assistant Government Pleader)
(D-3 by: Sri. K.G. Sunil, Advocate)

PARTIES TO I.A.No.II

APPLICANTS:
PLAINTIFFS

Sri.K.C. Ramesh & others.

V/s

OPPONENTS:
DEFENDANTS

Town Municipal Council, Kadur others.

i	<i>Provision under which the application is filed</i>	<i>U/O 26 Rule 9 R/w Sec.151 of CPC</i>
ii	<i>Relief sought for</i>	<i>Appointment of court commissioner.</i>

iii	<i>The date on which the application is filed</i>	<i>19.11.2021.</i>
iv	<i>Number of the application</i>	<i>II</i>
v	<i>The date on which the objections are filed by different opponent</i>	<i>--</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>07.08.2024.</i>

STAGE: Trial concluded / Arguments.

ORDERS ON IA 19.11.2021.

This interim application has been filed by the plaintiffs under Order XXVI Rule 9 R/w Sec.151 of CPC seeking to appoint Taluk Surveyor of Kadur Taluk as Court Commissioner to measure the suit 'A' schedule property and to demarcate the encroached portion therein by the defendants as contended in the plaint.

2. This application is accompanied by an affidavit filed by the 1st plaintiff. The gist of the application averment is that this suit has been instituted seeking for the relief of declaration and possession of plaintiffs' title over the suit 'A' schedule property and for delivery vacant possession of encroached portion described as suit 'B' schedule property from the defendants. It is the specific contention of the plaintiffs that the appointment of court commissioner is very much necessary to ascertain that whether there is any encroachment or not and except the appointment of court commissioner there is no other mode or proof is available to them to prove their case. Hence, it is sought to appoint the Taluk

Surveyor of Kadur Taluk as Court Commissioner as prayed.

3. The respective counsel for the defendants have submitted no objections.

4. Heard the learned counsel for the plaintiffs. Perused the case records.

5. The points for consideration are as follows:

1. Whether it is essential to appoint the Taluk Survey of Kadur Taluk as court commissioner to measure the disputed property to note the alleged encroachment, if any?

2. *What order ?*

6. The above points are answered as follows:

Point No.1 - In the Affirmative

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

R E A S O N S

7. **Point No.1** :- This suit is for the relief of declaration of plaintiffs' title over the suit schedule property and also for the possession of 'B' schedule property which is alleged to have been encroached by the defendants. The defendants have denied the

allegation of encroachment and they claimed that they have not encroached any property of plaintiffs. It is a matter of record that respective parties have lead their oral and documentary evidence and when the matter was posted for closure of defence evidence, the present application has been filed seeking for the appointment of court commissioner. There is a specific allegation of encroachment which has been denied by the defendants. Under such circumstances, when there is a question of encroachment, it would be proper to appoint a court commissioner to ascertain the factual aspects. The report of the commissioner would certainly assist the court to arrive at a just conclusion of the case. It is needless to mention that the report of court commissioner is only a piece of evidence and it is for the respective parties to establish their specific contentions. As there is a specific allegation of encroachment, the present application deserves to be allowed. Accordingly, **the point under consideration is answered in the Affirmative.**

8. **Point No.2:** In view of findings on the foregoing point, the following:

ORDER

I.A dated 19.11.2021 filed by the plaintiffs U/o XXVI Rule 9 R/w Sec.151 of CPC is allowed.

Taluk Surveyor, attached to ADLR Office, Kadur or to his order any subordinate acquainted with the survey work is hereby appointed as Court Commissioner to measure the suit 'A' schedule property and to note encroachment if any made therein by the defendants, which is described by the plaintiff as 'B' schedule property.

The Commissioner's fee is fixed at Rs.3,000/-.

Both the parties are directed to file their memo of instructions within 7 days in the Office.

The learned Court Commissioner is directed to measure the disputed properties with reference to the respective pleadings, relevant documents and to report, if there is any encroachment as contended by the plaintiffs by answering the memo of instructions filed by respective parties.

The learned Court Commissioner shall fix the date for holding the spot inspection with prior notice to the respective parties and to conduct necessary work as ordered above and to file a detailed report along with sketch.

The Commissioner's Report shall be executed within one month of receipt and if any further extension of time found to be required, the learned Court Commissioner shall file a status report and seek for further directions.

(Dictated to Stenographer directly on computer, corrected by me and then pronounced in open court on this 7th day of August- 2024)

Sd/-
(IRFAN)
Senior Civil Judge
Kadur.