



**IN THE COURT OF THE III ADDITIONAL CIVIL JUDGE
AND JMFC, KADUR.**

Present: -Sri. Thahakaleel K.A., B.A., LL.B.,

II Addl. Civil Judge & JMFC., Kadur.
C/c III Addl. Civil Judge & JMFC., Kadur.

Dated: This 1st Day of August 2025

O.S.No.302/2019

PLAINTIFF/S: 1) Sri. Umesha
S/o Basappa,
Aged about 21 years,
Agriculturist,

2) Sri. Basappa
S/o Late Kariyappa,
Aged about 56 years,
Agriculturist,

Both are residents of Bislere
Village, Hirehallur Hobli, Kadur
Taluk, Chikkamagaluru District.

(Rep. By Sri. K.N. Rajanna., Advocate)

V/S

DEFENDANT/S 1) Sri. Devendrappa
S/o Govindappa,
Aged about 58 years,
Agriculturist,

2) Sri. Murthappa
S/o Halappa,
Aged about 60 years,
Agriculturist,

3) Sri. Mallappa
S/o Halappa,

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since dead by LR's

D-3 (a) Smt. Doddamma
W/o Late Mallappa,
Aged about 65 years,

(b) Sri. Rangappa
S/o Late Mallappa,
Aged about 40 years,

(c) Sri. Rajappa
S/o Late Mallappa,
Aged about 35 years,

All are residing at Bisalere Village,
Hirenallur Hobli, Kadur Taluk.

(Rep. By Sri.K.S.Renukaprasad., Advocate)

Parties to I.A No.VIII

Applicant/s : Sri. Basappa

V/S

Opponent/s : Sri. Devendrappa and Others

| Sl. No. | Subject | Remarks |
|----------------|--|-------------------------------------|
| 1 | Provision under which the application is filed | Order 26 Rule 9 R/w Section 151 CPC |
| 2 | Relief sought for | Appointment of court commissioner |
| 3 | The date of which the application is filed | 10.09.2024 |
| 4 | Number of the application | I.A.No.VIII |

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|---|--|---|
| 5 | The date of which the objections are filed by different opponents. | I.A.No.VIII on 02.12.2024 By the Defendants |
| 6 | The date of Order. | 01.08.2025 |

**ORDERS ON I.A No.VIII FILED BY THE PLAINTIFF
UNDER ORDER 26 Rule 9 R/w Section 151 C.P.C.**

The learned Counsel for the Respondent has filed the present I.A. under Order XXVI Rule 9 CPC, praying for the appointment of the Taluk Surveyor as Court Commissioner to measure the suit schedule property, and to prepare a sketch and submit a report to this court.

2. The Plaintiff No.2 has sworn to the affidavit, stating that the Plaintiffs have filed the present suit for the relief of the Declaration of title and possession. In the written statement, they have claimed that the properties of the plaintiffs and Defendants are different, and they have not disturbed the possession of the plaintiffs. When the plaintiffs were trying to cultivate the property, the Defendants intentionally came to the suit-scheduled property and disturbed the peaceful sowing of the ragi seeds. To find out real controversy between the parties, it is necessary to appoint the Taluk Surveyor as Court Commissioner. Hence, prayed to allow the application.

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3. Per contra, the Defendant has filed an objection to the IA No.VIII, stating that the Plaintiff has sworn to a false affidavit by suppressing material facts. The evidence of the parties not yet completed and at this stage the present application for appointment of Court commissioner not maintainable. Hence, prayed to reject I.A No.VIII.

4. Heard arguments of the both side and perused the material available on record.

5. The following points would arise for the consideration of this court.

1. ***Whether the applicant/ the Plaintiff has made out of a grounds to appoint court commissioner as prayed in the application?***

2. ***What Order?***

6. After carefully analysing the arguments and the pleadings of the parties this court answered the above points as follows:-

Point No.1 : In the Affirmative,

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

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:: R E A S O N S ::

7. Point No.1:- The plaintiff has filed present suit for Declaration and Possession. The contention of the Defendants are that, the properties of the plaintiffs and Defendants are entirely different and the Defendants never dispossessed the plaintiff from the suit schedule property. Admittedly, the present application is filed before completion of the evidence of both parties. In this regard, it is necessary to refer the Judgment of **Hon'ble High Court of Karnataka** reported in **2023 SCC OnLine Kar 53 Sri Shadaksharappa v. Kumari Vijayalaxmi:**

12. Under the provisions applicable for local inspection what is impermissible is the delegation of adjudicating power. To cite an example, if both parties claim to be in possession of the disputed property, the local inspection by the Commissioner cannot be ordered to ascertain the possession. The question of possession is to be decided by the Court. However, if one party alleges encroachment by another and another party denies such allegation, the Commissioner can be appointed to ascertain whether there is encroachment or not. In such a situation the Commissioner is appointed to find out the nature of possession. The report based on local inspection will be a handy tool to decide the case relating to encroachment. In the case on hand, the petitioner to prove his assertion of encroachment, instead of leading oral evidence of witnesses has applied for local inspection, and the same is not only permissible but also desirable.

13. The next question is, at what stage of the proceeding in a suit, the application can lie? As could be easily noticed from the provision, the provision is not 'stage' centric. Thus the provision can be invoked either before the commencement of the trial or after. If the application is filed before the commencement of the trial, the Court having regard to the pleadings and records may allow such application before the

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commencement of the trial. For example, in a given case, if the report is necessary for consideration of an application seeking some interim measure, before the commencement of the trial,' the Commissioner can be appointed, if the case is made out for a such appointment. On the other hand, again, having due regard to the pleadings and records, if the Court finds that there is every likelihood that after recording the evidence of the parties, the need to appoint the Court Commissioner may not arise or that the Court is of the view that it can take a call on the application, only after recording the evidence, then it may defer the order on the application till such time. Thus the decision as to when the report of the Commissioner is to be secured must be taken having due regard to the facts and circumstances.

The afore cited decision would make it clear that, the appointment of court commissioner is not a stage centric, the court can appoint the court commissioner at any stage, the report of the court commissioner would assist this court to adjudicate the case effectively. Hence, this court answers **Point No.1 in the Affirmative.**

8. POINT No.2:- In view of the above discussion and answering the above Point, this court proceeds to pass the following:

:: O R D E R ::

I.A. No.VIII filed by the Plaintiff under Order 26 Rule 9 r/w 151 of C.P.C. is hereby allowed.

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Consequently, the Taluk Surveyor Kadur is appointed as the court commissioner to measure the suit schedule property and submit report.

The Court Commissioner's fee is tentatively fixed at Rs.3,500/-payable by the Plaintiffs.

Both Parties are directed to file a memo of instructions.

*(Order dictated to the stenographer on computer typed by her, revised, corrected & then pronounced by me in open court on this the **1st day of August 2025**)*

(THAHAKALEEL K.A)

C/c III Addl. Civil Judge and JMFC
Kadur.

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