



**IN THE COURT OF III ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT KADUR.**

Dated : This 24th Day of July 2026.

:PRESENT:

Sri. THAHAKALEEL K.A., B.A. LL.B.,
III Addl. Civil Judge and J.M.F.C.,
Kadur.

OS No. 366/2019

PLAINTIFF/S : Sri. M.M. Parameshwaraiah,
S/o Sannamarulaiah,
Aged about 64 years, Agriculturist,
R/o G. Madapura Village, Yagati Hobli,
Kadur Taluk, Chikkamagalur District.

(Rep. By Sri. C.N.C. Advocate)

V/S

DEFENDANT/S : Sri. Maheshwarappa S/o Channappa,
Aged about 60 years, Agriculturist,
R/o G. Madapura Village, Yagati Hobli,
Kadur Taluk, Chikkamagalur District.

(Rep. By Sri. K.M.J, Advocate)

Parties to I.A No.X

Applicant/s : **Sri. Parameshwaraiah M.M.**

V/S

Opponent/s : **Sri. Maheshwarappa**



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	18.06.2026
4	Number of the application	I.A.No.X
5	The date of which the objections are filed by different opponents.	Objection not filed
6	The date of Order.	24.07.2026

ORDER ON I.A. No.10 FILED UNDER ORDER XXVI RULE 9
READ WITH SECTION 151 OF THE CODE OF CIVIL
PROCEDURE

The plaintiff has instituted the present suit seeking a decree of permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit schedule property.

2. When the matter was posted for arguments, the learned counsel for the plaintiff filed I.A. No.10 under Order XXVI



Rule 9 read with Section 151 of the Code of Civil Procedure praying for appointment of the Taluk Surveyor, Kadur Taluk, as Court Commissioner to measure the properties of the plaintiff and the defendant, identify the alleged road, ascertain the extent of the property alienated by the defendant as well as the remaining adjacent portion of the defendant's property, prepare a sketch, and submit a report before this Court.

3. In the affidavit filed in support of the application, the plaintiff has contended that the suit schedule property is his self-acquired property purchased from one Vijayadevuru for valuable consideration. It is stated that ever since the date of purchase, he has been in peaceful possession and enjoyment of the property, wherein he has constructed a residential house, an out-house, a tractor shed and has fenced the property. According to the plaintiff, the defendant owns property situated on the northern side of the suit schedule property and is making attempts to trespass upon and encroach the plaintiff's land while falsely



claiming the existence of a road through the suit property. It is further contended that, although the defendant in the written statement, chief-examination affidavit and cross-examination has admitted that he is not interfering with the plaintiff's possession, he is nevertheless attempting to encroach upon the suit property by claiming a non-existent road. Hence, according to the plaintiff, it has become necessary to appoint the Taluk Surveyor as Court Commissioner to measure both the plaintiff's and defendant's properties, identify the alleged Nakasha road, ascertain whether such road passes through the suit schedule property or the defendant's property, prepare a sketch and submit a report to the Court in terms of the memo of instructions filed by the parties.

4. Despite sufficient opportunities having been granted, the defendant has not filed objections to I.A. No.10. Heard the learned counsel appearing for both parties and perused the material available on record.

5. Now, the following point arises for consideration:



1. Whether the plaintiff has made out sufficient grounds for appointment of a Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure?

2. What Order ?

6. My finding on the above point are as follows : -

Point No.1 : In the Negative,

Point No,2 : As per the final Order for the following;

:: R E A S O N S ::

7. POINT NO.1: It is not in dispute that the present suit is one for permanent injunction simpliciter, wherein the plaintiff claims to be in lawful possession of the suit schedule property measuring 6 guntas in Sy. No.64/1A2 situated at G. Madapura Village, Yagati Hobli, Kadur Taluk, and alleges interference by the defendant from the northern side.

8. On the other hand, the defendant, in the written statement, has denied the plaint averments and has specifically



contended that he is the owner and possessor of land bearing Sy. No.64/14 measuring 38 guntas, out of which 0.25 guntas has been left in favour of the Gram Thana and 2 guntas has been sold to one Marulasidappa, S/o Basappa, leaving him in possession of 10 guntas. The defendant has further stated that he is also the owner of Sy. No.64/2 measuring 25 guntas situated in the same village. Thus, according to him, he is in lawful possession of a total extent of 35 guntas. The boundaries furnished by the defendant disclose that the southern boundary of his property is a road followed by the plaintiff's property. The defendant has categorically denied having interfered with the plaintiff's possession and has asserted that the suit has been instituted without any valid cause of action.

9. A careful perusal of the pleadings and the application would reveal that the principal object behind filing the present application is to ascertain whether a road exists between the properties of the parties. Significantly, the plaintiff himself has



pleaded that on the northern side of the suit schedule property there exists a road and thereafter the defendant's property. The defendant has also not specifically disputed the existence of such road. On the contrary, in the schedule of the defendant's property, the southern boundary is shown as "road and thereafter the plaintiff's property." Thus, prima facie, both parties have described the existence of a road separating their respective properties.

10. It is also pertinent to note that the defendant has produced the Hadbast Sketch prepared by the competent survey authorities on the basis of an application submitted by the plaintiff himself. The plaintiff, though being the applicant for such survey proceedings, has not chosen to produce the said document before the Court. The non-production of a document admittedly obtained at his instance raises an adverse inference against the plaintiff.

11. Further, Exhibit P16 clearly indicates that an official survey has already been conducted by the competent Survey



Department pursuant to the application submitted by the plaintiff, namely, Sri M.M. Parameshwaraih. Therefore, the question regarding identification of the property and the existence of the road has already been the subject matter of an official survey conducted by the competent authority.

12. The settled principle of law is that a Commissioner cannot be appointed for the purpose of collecting evidence on behalf of a party or to enable a party to establish its case. Appointment of a Commissioner under Order XXVI Rule 9 CPC is intended only for elucidating matters in dispute where local investigation becomes indispensable for effective adjudication. In a suit for permanent injunction, the primary issue for consideration is whether the plaintiff was in lawful possession of the suit schedule property as on the date of the suit and whether there was interference by the defendant. Such issues are required to be established by oral and documentary evidence adduced by the respective parties and not by appointing a Court Commissioner to collect evidence.



13. When an official survey has already been conducted by the competent authority and the relevant survey records are available, appointment of another Commissioner to undertake the very same exercise would be wholly unnecessary and would amount to collecting evidence for the benefit of the plaintiff. No exceptional circumstances have been made out warranting exercise of the discretionary power under Order XXVI Rule 9 CPC. Accordingly, this Court is of the considered opinion that the plaintiff has failed to establish sufficient grounds for appointment of a Court Commissioner. Hence, Point No.1 is answered in the **Negative.**

14. POINT NO.2: In view of the above, I proceed to pass following;

ORDER

I.A. No.10 filed by the plaintiff
under Order XXVI Rule 9 read with



Section 151 of the Code of Civil

Procedure is hereby dismissed.

No order as to costs.

(Judgement transcribed through AI-Adalath software, corrected by me and then pronounced in open court on 24th day of July 2026)

Sd/-

(THAHAKALEEL K.A)

III Addl. Civil Judge and JMFC
Kadur.

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