

ORDER ON I.A. No.III

The present application has been filed by the respondent No.4 under Order 26 Rule 10 R/w Section 151 of CPC, seeking to summon the Court commissioner for the purpose of cross-examination.

2. In support of the present application, the respondent No.4 has filed memorandum of facts by contending that the commissioner report is not specific about the instructions given by respondent No.4 and there is no specific answer to the instructions given by them in memo of instructions. They have objected the commissioner report and hence, it is very much necessary to summon the Court commissioner for the purpose of examination. On the above grounds, respondent N.4 has sought for allowing the application.

3. On the other hand, the petitioner submits no objection to the above application.

4. Having heard the learned counsels for respective parties, this Court has carefully perused the entire materials on record.

5. On perusal of the record it appears that the commissioner was appointed to conduct local inspection as per order dated 17.12.2021. After receiving the commissioner report both the

parties has given an opportunity to file objection. After filing of the objection the matter has been posted to hear on commissioner report in the meanwhile, the respondent No.4 has come up with this application by contending that the commissioner has not conducted the inspection according to the instructions given by them and he intends to cross-examine the commissioner with regard to the inspection conducted by him. On the other hand petitioners submitted no objection to the said application. However Order 26 Rule 10(2) stipulates that the commissioner report including any evidence taken during the local inspection or investigation must be included in the Court record and the said report will be considered as legal evidence. If the party or Court needs any clarification with regard to the same with permission can examine the commissioner in the open Court and it is also necessary for fair consideration of all evidence presented in the case. In the present case the main contention is the commissioner has not acted according to the instructions given by them and they need clarification regarding the conduct of commissioner. Hence in view of interest of justice this Court proceeds to pass the following;

O R D E R

**IA.No.III filed by the respondent No.4
under Order XXVI Rule 10 R/w Section 151
of CPC is hereby allowed.**

**Issues summons to Court
Commissioner for Examination. Call on
04.06.2026.**

Sd/-

**I Addl. Civil Judge & JMFC
Mudigere**