



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.
AT N.R.PURA, ITINERATE AT KOPPA**

Present: Sri Raghunatha Gowda K.T., B.Com.,L.L.B,
Senior Civil Judge & J.M.F.C. N.R.Pura, Itinerate at Koppa

Dated this the 22nd day of March, 2025

O.S. No.10/2021

- PLAINTIFF :
1. Sri. K.A. Sathisha,
S/o. Late. Anne Gowda,
Aged about 51 years,
 2. Smt. S.S. Bhavani,
W/o. K.A. Sathisha,
Aged about 50 years,

Both are R/o. Karuvane, Billagadde Village,
Hariharapura Hobli, Koppa Taluk.

(By Sri B.K.V. Advocate)

Vs/-

- DEFENDANTS :
1. Smt. Jayamma,
W/o. Late. K.M. Gopala Gowda,
Aged about 75 years,



2. Sri. K.G. Srinivasa,
S/o. Late. K.M. Gopala Gowda,
Aged about 42 years,
3. Smt. Prabha,
W/o. K.G. Srinivasa,
Aged about 35 years,

All are R/o. Karuvane, Billagadde Village,
Hariharapura Hobli, Koppa Taluk.

(Represented by By Sri M.H.S.K., Advocate)

I.A. No.II

Applicant/defendant No.3 : Smt. Prabha,

V/s

Opponent/plaintiff : Sri K.A. Sathisha & another

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ORDER ON I.A. No.II

When the matter posted for arguments on merit at this stage the defendant counsel submit that earlier he filed the I.A. No.II under Order XXVI Rule 9 R/w. Sec.151 of C.P.C to appointment of Survey Officer as a Court Commissioner to



conduct the local investigation and submit his report. The said application is kept in abeyance on 04.03.2023. Now the defendant counsel to press the said application in the interest of justice.

2. In support of this application the defendant No.3 filed her affidavit, she contended that the plaintiff shown the wrong boundaries and made a wrong claim about the schedule property and the plaintiff claiming the existence of road through the false narrated story, the plaintiff has without having any right over the Government land as well as the lands of defendants under their possession. Further she contended that the plaintiff wants to farm a new road near by the house of the defendants and he did not shown the road as schedule in the suit and in order to proper adjudicate of the matter the appointment of commissioner is very much necessary. If the said application is allowed no loss or hardship caused to the plaintiffs. Hence she prays to allow this application.

3. Per contra the plaintiffs counsel filed objection to the said application contended that the application filed by



the defendant No.3 is not maintainable either in law or facts. Further he contended that the plaintiffs are claiming the right over the Government road, for which the defendants have no right and existence of the road is very clearly forthcoming from the records. Further he contended that the defendant No-3 filed this application with an intention to collection of evidence and it is not permissible under law. Further he contended that already the plaintiffs are produce the survey sketch before this court same was clearly discloses that there is an existence of road. Hence the appointment of commissioner is not required. Hence he prays to reject the said application.

4. Heard the arguments of both side, on careful perusal of records.

5. The following points arise for my consideration.

1. Whether the appointment of court Commissioner is necessary to adjudicate of the matter in dispute involved in the suit?
2. What order?



6. My answer to the above points is as follows:

Point No.1 : In the Affirmative.

Point No.2 : As per the final order
For the following

REASONS

7. **Point No.1:** On perusal of the records the plaintiffs are filed this suit against defendants for relief of declaration and permanent injunction. Further both the parties are concluded their evidence and now the matter posted for argument. Earlier before commencement of evidence the defendant No.3 filed this application for appointment of commissioner, vide order dated 04.03.2023 this court order that I.A. No.II filed by the defendant No.3 is kept in abeyance till both the parties are adduce their evidence. Now the defendants press the said application.

8. On perusal of entire records as per say of the plaintiffs that there is a road running in the Government land bearing Sy. No.137 and 223 of Billagadde Village of Hariharapura Hobli, the said road 12 feet width and 200



meter, the said road used by plaintiffs now the defendants are causing obstruction to use of the said mud road. The real dispute between both the parties with regard to the said road only. Further the plaintiffs are gave several representation to the Tahsildar, Deputy Commissioner and the Chief Minister of Karnataka with regard to the defendants are caused obstruction to make use of the said road. Further the defendants are very disputed the existence of road in front of their house and now the plaintiffs are intended to farm a new road in the suit property.

9. Further at this juncture it will appropriate to re-extract the provisions of **Order 26 rule 9 of CPC stated as under;**

Commissions to make local investigations.—
In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court



may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

10. The above said section makes it clear that the appointment of commissioner to local investigation to be requisite or proper for the purpose elucidating any matter in dispute under such circumstances the appointment of commissioner is required and if there is any ambiguity or necessity. Further, there is an ambiguity in the both the parties to resolve the dispute between the parties. Under such circumstances the appointment of commissioner is required. Further the lis between plaintiffs and defendants with regard to make use of the alleged road existence in the suit property or not, so that reason the appointment of commissioner is very much necessary.



11. Further with regard to when and under what circumstances to appointment commissioner is required the said proposition of law laid down by the Hon'ble High Court of Karnataka in the judgment reported in **2023(1) KCCR 637 in between Sri Shadaksharappa Vs. Kum. Vijayalakshmi and another**, in the said judgment the Hon'ble High Court clearly held that the form of a suit is never the guiding or deciding factor, while considering the application for appointment of commissioner, the guiding factor is 'whether the report is necessary for elucidating matter in dispute, it can be any kind of suit. Further at para No.17 of the judgment it clearly held that the appointment of commissioner cannot be rejected on the premise it amounts to collection of evidence and if the court deems it fit that report is necessary elucidate the matter in dispute then the application for local inspection has to be allowed. The ratio laid down in the judgment is applicable to the facts and circumstances of the present case. Further in order to resolve the dispute between the plaintiffs and defendants and the court comes to proper conclusion the appointment



of commissioner is very much necessary. Hence the reasons stated in the affidavit of defendant No.3 is satisfied. Hence I answer the **point No.1 in the Affirmative.**

12. **Point No. 2:** For the above discussion I, proceed to pass the following order;

ORDER

The I.A. No.II filed by the defendant No.3 under order XXVI Rule 9 R/w. Section 151 of CPC for appointment of commissioner to make local inspection and submit his report is hereby allowed.

The Taluk Surveyor, Koppa is hereby appointed as Court Commissioner to conduct the local inspection and submit his report.



The commissioner fee fixed at Rs.4,000/-, the commissioner fee shall be deposited by defendants. Both the parties are filed memo of instructions.

Office is directed to issue commissioner warrant after depositing commissioner fee and filed memo of instructions.

No order as to cost.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in open court on this **22nd day of March, 2025**)

Sd/-

(Raghunatha Gowda K.T.)
Senior Civil Judge & J.M.F.C.,
N.R.Pura, Itinerate at Koppa.