



IN THE COURT OF CIVIL JUDGE AND J.M.F.C, SRINGERI

**PRESENT: Sri. Rahul Shettigar, B.Com (Hons.), LL.B
Civil Judge & J.M.F.C, Sringeri**

DATED THIS THE 17th DAY OF SEPTEMBER 2024

ORIGINAL SUIT No. 8/2019

BETWEEN:

Sri. Srinivas Gowda,
S/o Singappa Gowda,
Aged about 63 years,
R/o Malnad, Nemmar Post,
Sringeri Taluk.

PLAINTIFF

(By Sri. Charan K C, Advocate)

-AND-

1. Sri. Venkatesh Bhat
S/o Late Mahabala Bhat,
2. Smt. Gowri, W/o Chandrashekar,
3. Sri. Narashimamurthy,
S/o Late Mahabala Bhat,
All are resident of Malnad, Nemmar Post,
Sringeri Taluk.

DEFENDANTS

(By Sri. Shashibhushan S G , Advocate)

IN I.A.NO.V

Sri. Srinivas Gowda,

APPLICANT/ PLAINTIFF

-AND-

Sri. Venkatesh Bhat and others

**OPPONENTS/
DEFENDANT No. 1 to 3**



PARTICULARS

<i>i</i>	<i>Provision under which the application is filed</i>	<i>Order XXVI Rule 1 r/w Section 151 of CPC</i>
<i>ii</i>	<i>Relief sought for</i>	<i>Appointment of Commissioner</i>
<i>iii</i>	<i>The date on which the application is filed</i>	<i>29-08-2024</i>
<i>iv</i>	<i>Number of the application</i>	<i>I.A.No.V</i>
<i>v</i>	<i>The date on which the objections are filed by different opponents</i>	<i>09-09-2024</i>
<i>vi</i>	<i>The date on which the orders were passed on the said application</i>	<i>17-09-2024</i>

ORDERS ON I.A. NO. V

1. Applicant/ Plaintiff has filed the instant application under Order XXVI Rule 1 r/w Section 151 of C.P.C with the prayer to appoint Court Commissioner to conduct Survey of the properties in Sy.No.110/10 and Sy.No.111/12 of Malenadu Village, Kigga Hobli, Sringeri Taluk and submit his report regarding the alleged encroachment of the property belonging to the Plaintiff.
2. In the affidavit appended to the application, it is contended that the present suit has been filed by the Plaintiff seeking relief for possession of Sy.No.111/10 of Malenadu Village, Kigga Hobli, Sringeri Taluk, which is alleged to have been



encroached upon by the Defendants, who own property in Sy.No.111/12 adjoining the Plaintiff's property; the truth or otherwise of the allegation of encroachment will be revealed if the properties in question are subjected to a survey by the Taluk Surveyor, as consented by the Defendants during the trial; in a suit of this nature, subjecting the disputed property to survey is the only appropriate course to ascertain the ground realities; if the application is rejected, the Plaintiff will suffer irreparable loss and hardship. Hence, the Plaintiff prays that the application be allowed.

3. *Per contra*, the Opponent/ Defendant have filed detailed objections contending that the application is not maintainable in law or fact and should be dismissed in *limine*; the reasons assigned in the supporting affidavit are highly insufficient to allow the application; It appears that the Plaintiff intends to improve his case at this belated stage, despite the lapse of four years since filing the suit; no cogent, relevant or reasonable reasons have been provided to support the application; the Plaintiff himself has admitted that the parties to the suit are enjoying their respective properties as granted by the LRT, Sringeri and hence, the Plaintiff cannot maintain



the present application, which clearly lacks bona fides; having failed to establish his case with cogent evidence, the Plaintiff is now attempting to use this application to gather evidence, which is impermissible in law; if the application is allowed, it would cause significant hardship to the Defendants, while no loss or hardship is seen to be caused to the Plaintiff if the application is dismissed. Hence, the Opponents/ Defendants pray that the application be dismissed with heavy costs.

4. Heard both sides.
5. Having heard the rival contention and on perusal of the materials, the points that would now arise for my consideration are as under-

Point No.1 : Whether the Applicant/ Plaintiff has made out sufficient grounds for appointment of the Commissioner to make local inspection?

Point No.2 : What Order?

6. Now, my findings on the above points are as follows;

Point No.1 : In the Affirmative

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



REASONS

7. **Point No.1:** The present suit is filed by the Plaintiff seeking relief of possession of the schedule 'A' property with the allegation that the Defendants have encroached upon the said land. The instant application is filed by the Applicant/ Plaintiff with the prayer to appoint Taluk Surveyor as Court Commissioner to conduct survey and submit his report on the alleged encroachment.
8. Before advertng to the factual matrix any further, it would be beneficial to first understand the overall concept pertaining to the appointment of commissioner for purpose of local investigation. Order XXVI Rule 9 of CPC, reads 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.”

9. Order XXVI Rule 9 of CPC, empowers the Court to issue commission to make local investigation, which may be required for the purpose of elucidating any matter in dispute. The Courtt can issue local commission *suo motu*, if in the facts and circumstances of the case, it is deemed necessary that a local investigation is required and is proper for the purpose of elucidating any matter in dispute. The object of local investigation under Order XXVI Rule 9 of CPC is to obtain evidence, which from its peculiar nature can best be had from the spot itself. Such evidence enables the Court to properly and correctly understand and assess the evidence on record. It clarifies or explains any point which is left doubtful on the evidence on record. The purpose of appointing commissioner for local investigation of the spot is not to help the party to establish a case. It is needless to state that the object of Order XXVI Rule 9 is not to assist the party to collect evidence. Since the object of the local investigation is not so much to collect evidence which can be taken in the Court, but the purpose is



to obtain such evidence, which from its peculiar nature, can only be had on the spot with a view to elucidate any point which is left doubtful on the evidence produced before the Court.

- 10.** Reverting to the factual matrix of the instant case, as already stated above, it is the specific positive assertion of the Plaintiff that the Defendants have encroached upon the portion of his land described as 'A' schedule property. The said allegation has been denied in its entirety by the Defendants.
- 11.** It is a settled principle of law that to determine the fact of encroachment, the assistance of a Court Commissioner can be sought to establish any such an assertions. It is also established law that a Commissioner should be appointed when there is ambiguity in the oral and documentary evidence. No amount of oral or documentary evidence can sufficiently clarify the alleged encroachment by the Defendants. Given this situation, I am of the considered opinion that appointing a Court Commissioner is appropriate in this case. The main objection by the Defendants is that there is inordinate delay in filing this application. However, it is settled law that an application of this nature should be



considered only after the conclusion of evidence of both sides. In this context, no prejudice will be caused to the Defendants if this application is allowed. On the other hand, if this application is rejected, the Plaintiff will be deprived of an opportunity to put-forth his case. This being the fact finding Court, has to provide all the opportunities to the parties to put-forth their case. With these observations, the **Point No.1** which has arisen for my consideration is answered in the **Affirmative.**

12. **Point No.2:** For the foregoing reasons, I proceed to pass the following -

ORDER

I.A No.V filed by the Applicant/ Plaintiff under Order XXVI Rule 1 r/w Section 151 of C.P.C is hereby allowed.

The Taluk Surveyor attached to A.D.L.R Office, Sringeri is hereby appointed as Court Commissioner to conduct survey of the landed properties in Sy.No.111/10 and 111/12 of Malenadu Village and submit his report regarding the alleged encroachment or otherwise of the suit 'A' schedule property by the Defendants.

The Commissioner fee is tentatively fixed at Rs.2,000/-.

The parties to the suit are at liberty to submit their respective memo of instructions within a week, from this day.



Issue Commissioner Warrant along with the memo of instructions submitted by the parties on depositing the Commissioner Fee and if P.F paid.

The Court Commissioner shall positively file his report within four weeks from this day.

(Typed, computerized and corrected by me and then pronounced in the Open Court, on this the 17th DAY OF SEPTEMBER, 2024)

**(Rahul Shettigar)
Civil Judge & J.M.F.C,
Sringeri.**