

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

**PRESENT: Sri. Jeethu R.S., B.A.L., L.L.M.,
Civil Judge & J.M.F.C, Sringeri**

DATED THIS THE 7th DAY OF FEBRUARY, 2026

O.S. No. 16/2016

BETWEEN:

Mr. Mohammed Yousuff Dead by his Lrs. **Plaintiffs**
1(a) Smt. Khairunnisa and 3 others

(By Sri. K R Suresh, Advocate)

-AND-

Smt. Haneefabi Dead by her Lrs. **Defendants**
1(a) Smt. Shakilabi and 7 other

**(D-1(a) to 1(h) By Sri. V R Natashekhara, Advocate,
D-2 to D-7 By Sri. H R Umesh Heggade,
D-3 Abated, D-2(a), 2(b), D-8 to D-14 Exparte)**

I A No. XVIII

Smt. Haneefabi Dead by her Lrs. **Applicant/
1(f) Fhazil, Defendants**

-AND-

Mr. Mohammed Yousuff Dead by his Lrs. **Opponent/
1(a) Smt. Khairunnisa and 3 others Plaintiffs**

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**ORDERS ON IA NO. XVIII FILED UNDER ORDER 26 RULE
9 R/W SECTION 151 OF CIVIL CODE OF PROCEDURE**

The applicant/defendant No. 1(f) has filed the above application under Order XXVI Rule 9 of r/w Section 151 of C.P.C., seeking to appoint the ADLR, Sringeri as Court



Commissioner to get the report along with the inspection report of the suit schedule property.

2. The applicant/ Defendant No.1(f) in the affidavit annexed to the above application has stated that, the plaintiffs have filed the above suit against the defendants for the relief of partition.

3. It is further stated that the mother of the defendant applicant had filed an application before the Tahasildar sringeri on 20.10.2021 for grant of suit schedule property and is pending for consideration. It is further stated that on 28.02.2024 the Special Land Acquisition has issued the notice to the grand mother of the applicant defendant. It is further stated that the land in Sy. No. 223 of Sringeri Village, Kasaba Hobli, not yet allotted to anyone. The Grand father of the defendant applicant has constructed the residential house by committing encroachment. The residential house of the mother of the applicant defendant is situated in Sy. No. 223. The mother of the defendant applicant had filed an application for grant of land before the Tahasildar on 12.02.2017 and the same is pending for consideration. The said properties are not the joint family properties of the plaintiff and defendants. The plaintiff has given the wrong description in the plaint. As such the plaintiff do not have any kind of right over the property in Sy. No.



223. Accordingly, the defendant applicant prays to allow the above application.

4. Per contra, the learned counsel for plaintiffs has filed the objection to the above application and has contended that the above application is false, frivolous and vexatious and not maintainable under law and on merits. The application is a clear abuse of the Court Process and the same is filed with an ulterior motive to delay the proceedings in the above matter. It is further contended that the above suit is instituted for the relief of partition and the records have been produced before the Court which shows the existence of the suit schedule properties more than 70 years. Further on careful perusal of the RTC pertaining to Sy. No. 223 there is no entry to show that there is an existence of government plant in the said survey number. As such prays to dismiss the above application.

5. Heard both sides and perused records.

6. On perusal following points arise for my consideration:

Point No.1 : Whether the appointment of ADLR, Sringeri as Court Commissioner in the present case is required for the purpose of elucidating the matter in dispute?

Point No.2 : What order?

7. My answers to the above points are as under:



Point No.1 : In the Negative.

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

REASONS

8. Point No.1: The plaintiff have instituted the above suit for relief of partition. Now the matter is posted for the arguments of the defendant on merits.

8. It is contended by the applicant that the application dated 20.10.2021 filed by the mother of the applicant for grant of suit schedule property is pending for consideration before the jurisdiction Tahasildar. Meanwhile the Land Acquisition Notice has been received by the grand mother of the applicant defendant. It is further contended that the land in Sy. No. 223 is not yet allotted to anyone. The Grand father of the defendant applicant has constructed the residential house by committing encroachment. The residential house of the mother of the applicant defendant is situated in Sy. No. 223. Thereby the plaintiff do not have any kind of right over the property in Sy. No. 223.

9. On the other hand the plaintiff have contended that they have filed the above suit for the relief of partition and



the records have been produced before the Court which shows the existence of the suit schedule properties more than 70 years. This Court has carefully gone through with the available evidence and documents before the Court. As the above suit is filed for the relief of partition over the suit schedule property. The plaintiff has produced the documents to show the existence of jurisdictional house in the suit schedule property. If at all there is no such existence of property bearing Assessment No. 520/507 which is a residential site. But, the above application is filed in respect of seeking the report from the ADLR, Sringeri while the matter is posted for hearing of the defendants on merits.

10. Further, it is relevant to refer the judgment of Hon'ble High Court of Karnataka in the case of Sri Shadaksharappa S/o Veranna V/s. Kumari Vijayalaxmi D/o Pampanna and others reported in 2023 Livelaw Kar 57. The relevant paragraph is herewith reproduced:

"20. In the backdrop of the discussions made above, this Court cannot lose sight of the fact that in a large number of suits before the Trial Court, the applications are filed for the appointment of a Commissioner. In other words, this is one of the frequently invoked provisions of



the Code. For this reason, this Court deems it desirable to summarise the broad guidelines that can be followed while exercising the power under Order XXVI Rules 9 and 10 of the Code of Civil Procedure.

a) The power of the court to appoint the Commissioner for local inspection or any other purpose provided in Order XXVI of the Code is discretionary. However, the said discretion is guided by not only Order XXVI Rules 9 and 10 of the Code but also the provisions of the Indian Evidence Act dealing with relevancy, expert opinion, and the burden of proof.

b) The discretion to exercise the power under Order XXVI of the Code of Civil Procedure is not governed by the form of the suit. The Court can appoint the Commissioner in any kind of suit, provided a report of the Commissioner under Order XXVI of the Code is necessary for elucidating the matter in dispute.

c) The issue framed in the suit, or where the issue is not yet framed, the pleadings which give rise to issue/s and the documents placed on record would be a guide to ascertain the 'matter in dispute' referred in Order XXVI Rule 9 of the Code.

d) The power to appoint the Commissioner for local inspection or scientific investigation/expert's opinion can be invoked even suo motu by the court, without there being an application by either of the parties, if the Court deems it appropriate to secure the report of the Commissioner. However, the appropriate reasons must precede the order appointing the Commissioner. And such orders are to be passed only after hearing the parties before it.

e) The Commissioner can be appointed either before or after the commencement of the trial. However having due regard to the nature of the controversy, if the report is essential for



elucidating the matter in dispute, it is desirable to have the local inspection before the commencement of trial as it is likely to reduce the volume of oral evidence in a given case.

f) In addition to the report, having regard to Order XXVI Rule 10 of the Code, the evidence taken by Commissioner reduced in writing can also be taken on record and examined by the court while considering the report.

g) The report of the Commissioner is not conclusive proof of what is stated therein. The report is only a piece of evidence, that the Court has to examine based on the other materials on record.

h) Report of the Commissioner need not be formally marked for being considered as evidence. Once submitted to the court, the report is part of the court record and can be looked into by the court.

i) The court may in its discretion examine the Commissioner on any matter concerning the report. There is no compulsion to examine the Commissioner. However, if the objection is filed to the report, and the party filing objection seeks to examine the Commissioner then the Commissioner should be examined. In either case, once the Commissioner is examined, the court having due regard to the evidence, may reject or accept the report in its entirety or in part, provided there are materials to justify such a finding on the report. In appropriate cases, the merit of the report can be considered at the final hearing. While considering the report at the final hearing, if the court finds that the report is erroneous and fresh commission is required, the court may pass appropriate order in this regard.

j) If the court is dissatisfied with the 'proceedings of the Commissioner' as found in Order XXVI Rule 10 (3), it may direct further inquiry depending on the facts. As a matter of



caution, it is clarified that examination and order under order XXVI 10 (3) are only to verify if the Commissioner has followed the proper procedure while carrying out his task.

k) The person who has filed an objection to the report has the option of cross-examining the Commissioner to substantiate his objections or even without crossexamination, it is open to establish that the report is inadmissible in evidence.”

11. Upon looking into the aforementioned guidelines of Hon’ble High Court of Karnataka, it is very clearly mentioned that appointment of a Court Commissioner is a discretionary order and such discretion should be applied to appoint a commissioner in order to elucidate any matter in dispute. Here in the case on hand, the plaintiff have instituted the above suit for the relief of partition and during the course of trial has produced documentsry evidence to show the existence, nature and character of the property. Even if the nature character and existence of the property is changed it could be ascertained at the time of drawing the final decree proceedings. Further, the very filing of the above application clearly shows the intention of the defendant applicant as pointed out by the counsel for plaintiff with respect to dragging of the matter in the above suit. As such, after looking into the guidelines issued by the Hon’ble High Court of Karnataka in the judgment mentioned supra, the defendant applicant have not made out a case for an appointment of



Court Commissioner. Accordingly, the **Point No.1 is answered in the negative.**

12. **POINT NO.2:-** Having held Point No.1 in the Negative, I proceed to pass the following:

ORDER

The I.A.No.XVIII filed by the defendant No.1(f) Under Order XXVI Rule 9 r/w Section 151 of CPC is hereby dismissed.

Parties to bear their costs for themselves.

(Dictated to the Stenographer computerized by stenographer, revised, corrected by me and then pronounced in the open Court, on this the 7th day of February, 2026.

Sd/- 07.02.2026.
(Jeethu R.S.)
Civil Judge & J.M.F.C,
Sringeri.