

KACM710001592021



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

Present: Smt.Urmila.V. B.A.L., LL.B.,
I Adtl. Civil Judge & JMFC, Tarikere.

Dated: 19th Day of February 2026

ORIGINAL SUIT NO.42/2021

PLAINTIFF/s :

Giddappa S/o late Hanumanthappa, aged
61 years, Agriculturist, R/o Duglapura
Village, Kasaba Hobli, Tarikere Taluk,
Chikkamagaluru District

(Reptd. By : Sri S.Sureshchandra, Advocate.)

Vs.

DEFENDANT/s:

- 1) Rangappa S/o Kariyappa, aged 60 years,
- 2) Chetana S/o Ranganna, aged 28 years,
- 3) Krishnamurthy S/o Ranganna, aged 25
years,

D.1 to 3 are Agriculturists, R/o Station
Duglapura Village, Tarikere Taluk.

- 4) Suresha S/o Lingaiah, aged 45 years,
(dead),
- 5) Rajashekaramurthy S/o Lingaiah, aged
48 years,

D.4 & 5 are Agriculturists, R/o Mudigere
Village, Ajjampura Taluk.

- 6) Rangaswamy S/o Thimmaiah, aged 50
years, Agriculturist, R/o Annapoorna

KACM710001592021



Nursery, N.H.206 Road, R/o Shivamogga
Town.

(D.1 to 3 : By Sri T.M.Raju. Advocate.
D.4 & 5 : By Sri S.Narayanarao, Advocate.)

PARTIES TO I.A.NO.V

Applicant/s : Rajashekaramurthy

Vs.

Opponent/s : Giddappa

i	Provision under which the application is filed	Order XXVI Rule 9 r/w Section 151 of CPC
ii	Relief sought for	Appointment of court commissioner
iii	The date of which the application is filed	16.07.2025
iv	Number of application	I.A.No.V
v	The date on which the objection are filed by different opponents	Not filed
vi	The date on which the orders were passed on the said application	19.02.2026

ORDER ON I.A.NO.V

When the matter is set down for cross examination of PW.1, the present I.A., is filed.

KACM710001592021



2. The defendant No.5 has filed the instant I.A., under Order XXVI Rule 9 r/w Section 151 of CPC with a prayer to appoint the ADLR, Tarikere for measurement of the suit schedule property and written statement schedule property and identification of the property in dispute.

3. The I.A., is annexed with the affidavit of defendant No.5. It is stated in the affidavit that defendant No.1 is his brother and the defendant No.4 during the pendency of the suit was died on 02.03.2022. The plaintiff has filed the present suit against to defendants for permanent injunction in respect of the suit schedule property situated at Duglapura Village in Sy.No.164/1 measuring 4 acres. It is further stated that the written statement schedule property old Sy.No.164/p after the durasth renumbered as 272, 273, 274, 275 and 287 totally measuring 8 acres is in possession and enjoyment of the defendant. It is further stated that the schedule property of the plaintiff is Sy.No.164/p and so far as the plaintiff property is not made durasth and it is still in the old number. In fact, the defendants No.4 and 5 is in possession and enjoyment of the schedule which has mentioned in the written statement and the plaintiff claiming the property in Sy.No.164/1 to an extent of 4 acres and there is a serious dispute between the plaintiff and the defendant in respect of the schedule property as well as the measurement. Hence, it

KACM710001592021



is necessary to appoint the Court Commissioner particularly A.D.L.R., Tarikere for measuring the Sy.No.164/1 as per the plaint schedule and to measure the property of the defendants No.4 and 5 as per the written statement schedule. It is further stated that there is a serious dispute in respect of the identity property of the plaintiff and the Sy.No.164 is the huge survey number having more than 500 to 600 acres of land and without survey and phode durasthi, it is very difficult to identify the property of the plaintiff. It is further stated that if the present I.A., is not allowed, he will be put to great hardship, irreparable loss, injury, inconvenience and injustice will cause to him and if the I.A., is allowed no injury will be caused to the other side. Hence, this I.A.

4. The copy of the I.A., served to the other side. The counsel for the plaintiff has orally submitted that he has no objections to allow the I.A.No.5.

5. Heard arguments on both sides.

6. On perusal of the rival contentions and other materials placed on record, the following points that would arise for my consideration are :

- 1) Whether the I.A.No.V filed by the defendant No.5 under Order XXVI Rule 9 r/w Section 151 of CPC is deserves to be allowed?
- 2) What order?

KACM710001592021



7. My findings on the above points are as follows :

Point No.1 : In the Negative,

Point No.2 : As per the Order,

for the following:

REASONS

8. **POINT NO.1** : On perusal of the materials available on record, admittedly the plaintiff has filed present suit against the defendants for the relief of permanent injunction in respect of the suit schedule property. When the matter is set down for cross examination of PW.1, the present I.A., is filed. It is the urge of the defendant No.5 that there is a serious dispute between the plaintiff and the defendant in respect of the schedule property as well as the measurement.

9. On the other hand, the counsel for the plaintiffs submit no objections to allow the aforesaid I.A., filed by the defendant No.1.

10. On perusal of the materials available on record, admittedly, it is a suit for permanent injunction filed by the plaintiff against the defendants in respect of the suit schedule property. In the instant suit, the evidence is already commenced. It is well settled legal preposition of law that, in a suit for permanent injunction the onus is always lies upon the plaintiff to prove his possession over the suit schedule

KACM710001592021



property as on the date of the suit and also the alleged interference caused by the defendants by adducing cogent and credible evidence. It is very significant to note that the defendant No.5 has sought for the relief of appointment of court commissioner as stated in the application to measure the suit schedule property and written statement schedule property. It is very significant to note that the defendants property is not a subject matter of the present suit on hand. It is well settled law that the question of appointment of commissioner arises only after adducing evidence of both parties. If the evidence available on record is not sufficient to decide the dispute between the parties, then only the court can appoint the court commissioner to ascertain the real facts. The defendant No.5 has filed this application when the matter is set down for cross examination of PW.1, it is nothing but a parallel proceedings for collection of evidence. It is well settled law that, mere non-objecting the I.A., by the other side is not a ground to allow the I.A., but it has to be decided on merits. At this stage, the defendant No.5 has not made out prima facie case to allow the present I.A. The I.A., filed the defendant No.5 is devoid of merits. For considering all these reasons, I answer Point No.1 in the Negative.

11. **POINT NO.2** : In view of my findings on Point No.1, I proceed to pass the following :

KACM710001592021

**ORDER**

I.A.No.V filed by the defendant No.5 under Order XXVI Rule 9 r/w Section 151 of CPC is hereby rejected on payment on cost of Rs.200/-.

(Dictated to the Stenographer on computer, typed by her, corrected by me and then pronounced in the open Court, on this the day of 19th day of February 2026.)

sd/-

(URMILA.V)
I ADDL.CIVIL JUDGE &
J.M.F.C., TARIKERE.