

**IN THE COURT OF THE PRL. CIVIL JUDGE AND
JMFC., AT GUNDLUPETE**

**PRESENT : Sri. Deepu M.T, B.A.L., LL.B.,
Prl. Civil Judge & J.M.F.C.,
Gundlupet.**

Dated this the 1st day of APRIL, 2026

OS No:07/2022

Plaintiff : Somappa
Aged about 60 years
S/o Late. Shivabasappa
R/at: Doddahundi Village
Beguru Hobli, Gundlupete Taluk.

[By Sri. PSG, Advocate]

V/s

Defendants : 1. Tandavamurthy
Aged about 60 years
S/o Late. Gurumallappa

2. Nanjundaswamy
Aged about 58 years
S/o Late. Gurumallappa

3. Gurumurthy
Aged about 55 years
S/o Late. Chikkannappa
R/at: Doddahundi Village
Beguru Hobli, Gundlupete Taluk.

**[By Sri. HSP, Advocate for D1 & D2]
[D3 : Exparte]**

Parties to I.A No.VII**Applicant** : Somappa

- Plaintiff

V/s**Opponent** : Tandavamurthy and Others

- Defendants

i.	Provision under which the application is filed	XXVI Rule 9 R/w Section 151 of Code of Civil Procedure
ii.	Relief sought for	To appoint Court Commissioner
iii.	The date on which the application is filed	09.01.2026
iv.	Number of the application	VII
v.	The date on which the objections are filed by different opponents	04.02.2026
vi.	The date on which the orders were passed on the said application	01.04.2026

Case stage: Arguments

ORDERS ON I.A.NO.VII U/o XXVI RULE 9 R/W SECTION 151 OF CIVIL PROCEDURE CODE

The plaintiff has filed this application praying to appoint Taluk Surveyor/ADLR as Court Commissioner for the identify the boundary of the schedule road and measure and identify the said road and submit report before this Court.

2. In the annexed affidavit to the application, the plaintiff has sworn that, the plaintiff has filed this suit for the relief of declaration of easementary right and permanent injunction against defendants in respect of schedule property. Originally, the plaintiff and defendants belonged to same family and they are having landed properties and cultivating the same, the plaintiff is having property bearing Survey No.50/3 measuring 1 acre 20 guntas and Survey No.50/4 measuring 35 guntas and same has been acquired by the plaintiff from his ancestors. The plaintiff is cultivating the said land and he is in possession of the same. It is necessary to use the bullock cart, tractor and lorry for agricultural purposes attached to the property of the plaintiff towards Western side, the property belongs to the defendant bearing Survey No.51 measuring 1 acres 33 guntas and Survey No.52 measuring 6 acre 20 guntas lands are situated, towards Western side of the lands of the defendants, there is Government main road is existence towards North - South and said road is situated towards Eastern side of the property bearing Survey No.53 situated towards Eastern West in the Southern side. The said road is using by the public and plaintiff and defendants to reach their properties. Thereafter, the

said road join to the Western side of property belongs to the defendants bearing Survey No.51 and 52. Thereafter, there is road existing towards Southern side of the property bearing Survey No.51 and 52 measuring 12 feet width and 500 feet length towards East to North and same is using by the plaintiff to reach his properties and to bring agricultural equipment, except that road, there is no alternative road to the plaintiff to reach his properties. The said road is using by the ancestors of the plaintiff and now, the plaintiff is using the same. Hence, it is just a necessary to measure the said road and identify the boundary of the said road submit report before the Court through the Court Commissioner. If the application is not allowed, the plaintiff will be put great hardship. If the application is allowed, no hardship will be caused to the other side. Hence, all these grounds, prayed to allow the application.

3. On the other hand, the defendants have resisted this application by filing objection contending that, the application is filed by the plaintiff is not maintainable either in law or facts. After filing of this suit, the plaintiff has furnished many documents through his examination-in-chief. Also, the plaintiff

examined PW-2 to prove his case. After completion of evidence of both side, case was posted for arguments. Again, the plaintiff had filed application for examining the witnesses same as been allowed. Thereafter, again case posted for arguments. At said point of time, the plaintiff has filed this application. Already, the plaintiff has produced the evidence and completed his procedure to prove his case. The materials available on record are sufficient to adjudicate the dispute between the parties. The plaintiff and defendants have produced sketch in order to prove the existence of road and the same is enough for come to conclusion regarding the existence of road. On all these grounds, prayed to dismiss the application.

4. Heard both side and perused written arguments filed by the parties, the following points arise for consideration of this Court :

- 1.** Whether the plaintiff has made out grounds to allow the application?
- 2.** What order?

5. Findings of this Court on the above points are as hereunder:

Point No.1	:	In the Negative
Point No.2	:	As per final order, for the following :

REASONS

6. Point No.1: On perusal of record, it appears that, the plaintiff has filed this suit for the relief of declaration of easementary right and permanent injunction against the defendants in respect of plaint schedule property. Through the instant application, the defendants have sought for appointment of Taluk Surveyor/ADLR as Court Commissioner to measure and identify the boundaries of the plaint schedule road and submit the report to this Court. In the annexed affidavit, the plaintiff has sworn that, it is just and necessary to measure and identify the boundaries of the plaint schedule road. Hence, prayed to allow the application.

7. The defendants have resisted the application and took contention that, the appointment of Court Commissioner in this suit is not maintainable. The matter has been posted for arguments and if the application is allowed, the defendants will be put to great hardship. Further, the materials available on record are sufficient to adjudicate lis between the parties. Hence, prayed to dismiss the application.

8. I have carefully perused the pleadings, I.A, annexed affidavit, objection and arguments of Learned Counsel of plaintiff and defendants. The plaintiff has sought for appointment of Taluk Surveyor/ADLR as Court Commissioner to measure and identify the boundaries of the plaint schedule property and submit the report to this Court. The same has been resisted by the plaintiff. Whether the appointment of Court Commissioner is necessary for adjudication of the matter or not has to be adjudicated by this Court. According to the case of the plaintiff, the plaintiff from the period of his ancestors using the plaint schedule property to reach their properties and the defendants being the owner of the plaint schedule property, they are interfering to use the plaint schedule property. The defendants have denied the case of the plaintiff and existence of plaint schedule property. As per the pleadings of the plaintiff, from the time of the ancestors, the plaintiff and family members are using plaint schedule property to reach their properties. Therefore, the plaintiff is claiming easementary right by way of prescription. Under such circumstances, the plaintiff has to the existence of the plaint schedule property. The plaintiff cannot collect the evidence by appointing Court Commissioner to establish the

existence of plaint schedule property. Moreover, if the application is allowed it amounts to collection of evidence. Hence, question of entertaining the application of plaintiff for appointment of Court commissioner does not arise.

9. Moreover, the plaintiff has filed this suit for the relief of declaration of easementary right and permanent injunction against the defendants. Therefore, burden of proving all the issues casted up on the plaintiff only. Since this suit is for declaration and permanent injunction and the plaintiff has pleaded that, he is using the plaint schedule property to reach his properties, the question of measuring and identifying the plaint schedule property does not arise. Under such circumstances, the application filed by the plaintiff does not hold water.

10. The appointment of commissioner to measure and identify the boundaries of plaint schedule property and submit report which amounts to collection of evidence which is not permissible under law. At this stage it is relevant to refer decision reported in **2014(1) K.L.J. 1995 between K. Bakthavasthala Nemichandra -Vs- the Commissioner Bengaluru**

Development Authority, Bengaluru and others,

which read as hereunder :

**Civil Procedure Code- Order XXVI
Rule 9-Commission for identification
of suit schedule property application
moved by plaintiff suing for
injunction, for issue of -whether
applicant has given boundaries of
suit schedule property and averred
that he is the absolute owner in
possession and enjoyment of suit
schedule property, appointment of
commissioner, held is not necessary,
no- when suit is at the stage of final
disposal-no interference held, is
warranted with trial courts or
rejecting application.**

The principles reiterated in the above said decision is squarely applicable to the case on hand.

11. More than that the counsel appearing for the defendants have pointed out oral and documentary evidence, which are in existence to decide lis between the parties. Those evidence will be beacon of light in deciding the dispute between the parties. This Court at this stage does not intend to appoint Court Commissioner, as the case is at the stage of arguments. As per provision of the Indian Evidence

Act, the burden is bestowed on the plaintiff to prove his case by leading evidence. The commissioner will be appointed only in the cases whether evidence placed on record is not sufficient to decide the dispute between the parties and evidence is such a nature by its peculiarity in nature cannot be given either by oral or documentary evidence. The oral evidence and documentary proof are enough to decide the lis between the parties with regard to the said preposition of law.

12. And also another decision reported in **ILR 2002 KAR 3599** between **Annappa Mestha -Vs- Muthayya Achar** which reads as hereunder :

Civil Procedure Code 1908 (Central Act No.V of 1908)- Order XXVI Rule 9-appointment of commissioner can be resorted to only in cases whether, either from the records or from the evidence, it is not possible for the court to determine the dispute.

The aforementioned decisions are aptly applicable to this case. The evidence lead by the parties are substantiate to decide the lis between the parties and this Court does not find any reason to consider the application filed by the plaintiff for appointment of court

commissioner. Moreover, there is no ambiguity in the evidence as alleged by both the parties. Under such circumstances the application filed by the plaintiff devoid of merits in the touch stone of the reasons assigned above, this Court has answered **point No.1 in the Negative.**

13. Point No.2: In view of the reasons and discussions made on point No.1, this Court proceed to pass the following :

ORDER

The I.A.No.VII filed by the plaintiff under Order XXVI Rule 9 R/w Section 151 of Civil Procedure Code is hereby dismissed.

In view of facts and circumstances of the case, no order as to costs.

[Dictated to the Stenographer, transcribed by her, corrected by me and then pronounced in the open Court on this the **1st day of APRIL, 2026**]

**[DEEPU M.T]
Prl. Civil Judge & JMFC.,
Gundlupete.**