

KADG320003242024



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

**(Presided Over by SMT. JYOTI ASHOK PATTAR)  
(B.E., LL.B.)**

**O.S. No.28/2024**

Dated this the 17<sup>th</sup> day of March, 2026

Smt. Susheelamma

**....PLAINTIFF**

**Vs.**

Sharanappa S/o Late. Halappa

**.....DEFENDANT**

**PARTIES TO I.A. No.II**

Smt. Susheelamma

**....APPLICANT/  
PLAINTIFF**

**Vs.**

Sharanappa S/o Late. Halappa

**.....DEFENDANT**

**PARTIES TO I.A. NO.II**

i	Provision under which the application is filed	U/o 26 Rule 9 R/w Sec.151 of CPC
ii	Relief sought in the application	Appointment of Court Commissioner
iii	The date on which the application is filed	15.03.2024
iv	Number of the application	I.A. No.II
v	The date on which the objections are filed by the defendant/opponents	26.04.2024
vi	The date on which the order passed on the said application.	17.03.2026

**ORDER ON I.A.No.II**

The plaintiff has filed an application U/o 26 Rule 9 R/w Sec.151 of CPC seeking to appoint a Court Commissioner to measure the suit schedule property and fix the boundaries of the suit schedule properties, at the stage of written statement.

**2.** It is stated in the accompanying affidavit that, the plaintiff is in possession of the suit schedule properties. But the defendants are trying to interference with her peaceful possession and enjoyment of the suit schedule

properties by trying to construct a house. Hence the plaintiff come up with present application requesting for measurement of encroached portion of suit schedule properties. Hence this application.

**3.** On the other hand the defendant has filed objection to the said application and contended that, the plaintiff has filed suit for permanent injunction she has to prove the identification of the suit schedule property by producing the proper documents and proper measurement of the suit schedule property. The plaintiff not clearly stated the measurement and property number of the suit schedule property. On these grounds prays to reject the application.

**4.** Heard both side.

**5.** Perused the materials on record.

**6.** The following points arise for this Court determination:

1. Whether the applicant/plaintiff made out sufficient grounds for appointment of Court Commissioner as sought for?
2. What order?

**7.** The Court findings on the above point are as under:

Point No.1: In the Negative

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

**REASONS**

**8.** Point No.1 : That the present application is filed by the plaintiff seeking to appoint Court Commissioner to measure the suit schedule properties and to measure the encroachment made by the defendant over the suit schedule properties. That the case is one for permanent injunction and the plaintiff has to prove her title and peaceful possession and enjoyment of the suit schedule properties as on the date of the suit. Moreover in the case on hand, there is dispute between the parties is in respect of title over the suit schedule properties. Therefore the burden is on the plaintiff to prove her title, peaceful possession and enjoyment over the suit schedule properties by adducing oral and documentary evidence. But the plaintiff instead of leading cogent evidence come up with this application for appointment of Court Commissioner which amounts to collection of evidence at this stage. It is well settled principle of law sited in number of judgments of Hon'ble High Court and Hon'ble Apex Court that the Court Commissioner cannot be appointed for ascertaining the possession over the suit schedule properties.

**9.** On going through the materials placed before the Court by the plaintiff it reveals that admittedly the plaintiff has no other documents except a Will dated: 30.01.1980 in support of her case and she herself stated in her plaint that the efforts made by her to obtain documents of the plaint schedule properties are went in vain. The Will dated: 30.01.1980 reveals that the suit schedule properties are bequeathed by the father of the plaintiff by name Gangappa to the plaintiff and her sisters by name Karibasamma, Lalithamma and Sowbhagyamma. But no measurement/extent has been mentioned in the said Will as well as in the plaint schedule. Moreover the said properties bequeathed to plaintiff and her sisters, but the plaintiff alone has come up with present suit. However there is no material on record to show the measurement/extent of the property. Under such circumstances it is heard to ascertain the identification of the suit schedule properties. Moreover admittedly the black tiled house of the plaintiff is collapsed, but the schedule is shown as black tiled house only. Thus the very description of the property itself is not believable. Thus it is not appropriate to appoint the Court Commissioner for ascertaining the identification and possession over the suit schedule properties at this stage. Hence, this Court do not find any merits in the application filed by the plaintiff.

Being that opinion the application deserves to be rejected. Accordingly, point No.1 answered in the Negative.

**10.** Point No.2 : In view of findings on point No.1, this Court proceed to pass the following,

**ORDER**

I.A.No.II filed by the plaintiff  
U/o 26 rule 9 R/w Sec. 151 of CPC  
is rejected.

No order as to costs.

**(Jyoti Ashok Pattar)**  
**Pri. Civil Judge & JMFC.,**  
**Harihar.**