

KADG320022672017



**IN THE COURT OF THE I ADDL. CIVIL JUDGE &
J.M.F.C. HARIHAR**

:: PRESENT::

Sri. SHRINIVAS PATIL. B.A. LL.B. LL.M

I Addl. Civil Judge & JMFC, HARIHAR

Dated this the 13th day of July, 2026

O.S. NO.181/2017

PLAINTIFFS: **Smt. Soubhagya and another**

(R/by Sri. E.M. - Adv.)

- V/s -

DEFENDANTS: **Sri.Chandrappa and others**

**(D1 & 2 – Exparte
D3 by Sri. K.S.I. – Adv.)**

ORDERS ON I.A. No.X

The present order addresses the application filed by
the defendant No.3 under Order 26 Rule 9 read with

Section 151 of CPC seeking the permission of the Court to appoint the court commissioner for local inspection of the plaint schedule and written statement schedule properties.

2) In the affidavit annexed to the application it is urged by the defendant No.3 that he has filed the written statement. The evidence of both the sides is closed. PW.1 has also produced photographs subsequently when the photographs produced by the defendant No.3 were marked in evidence. The photographs produced by the plaintiffs and defendant No.3 are similar and it appears that the plaintiffs are claiming the same site. But the boundaries of the plaint schedule and the written statement schedule are different. As such, there is a serious dispute with regard to situation of the boundaries of the sites in question. Hence appointment of court commissioner is necessary to ascertain whether the plaint schedule property is situated as per the boundaries mentioned in the schedule. Hence prayed to allow the application.

3) On the other hand, the plaintiffs have filed objections to the said application and contended that application is not maintainable either in law or on facts and the same is liable to be dismissed. The documents at Ex.D.1 and P.19 are sufficient to consider the boundaries and nature of properties of both the parties. Nowhere in the written statement or during the evidence, defendant No.3 has stated about the existence of school or the nature of boundary. Even in the Khata extracts, there is no mention of building and school. On the basis of created photos, the defendants cannot seek the relief of appointment of court commissioner. Hence prayed to reject the application.

4) Heard the learned counsel for the plaintiffs and defendant No.3. Perused the materials available on record.

5) On perusal, the following points arise for my consideration:

1. Whether the defendant No.3 has made out sufficient grounds for appointment of Court Commissioner for the purpose of elucidating the matter in dispute between the parties ?

2. What order?

6) My answer to the aforementioned points are as under:-

Point No.1 : **In the Affirmative,**

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

REASONS

7) **Point No.1:** The power of the Court to appoint the Court Commissioner for local inspection is enshrined under Order 26 Rule 9 of CPC. It is settled law that the report of the Court Commissioner is only a piece of evidence. The parties are entitled to cross-examine the commissioner and to adduce evidence in support of or in opposition to the report. The report throws light on the physical features, location, boundaries and measurement of the property.

8) The ***Hon'ble High Court of Karnataka in Shadaksharappa Vs. Vijayalakshmi and others, reported in (2023) 1 KCCR 637*** has laid down the guidelines for appointment of Court Commissioner. The Hon'ble High Court has held that power to appoint the

Court Commissioner is discretionary and form of suit does not control the power and the Court may appoint a commissioner in any kind of the suit if the report is necessary for elucidating the matter in dispute.

9) Keeping the above principles of law in mind, it has to be examined whether in the present case, appointment of Court Commissioner is required to elucidate the matter in dispute. The present suit is of the year 2017. The evidence of both the sides is closed. Now, the present application is filed. The admitted position in this case is that both the plaintiffs and defendant No.3 are claiming in respect of site No.9. It is also relevant to know that both the documents of parties mention site No.9. The measurement is also stated to be same. However, the boundaries mentioned in the documents of both sides are different. Therefore, there is a dispute regarding the identity and location of the actual site.

10) When both parties claim site No.9, but the boundaries are different, it becomes necessary to know whether both parties are claiming same property. It is also

necessary to know whether there is any overlap between the plaint schedule and written statement schedule property. Such matter cannot be properly understood only by reading the documents.

11) The plaintiffs counsel while addressing his arguments has pointed out that in the sale deed relied upon by the defendant No.3 which is marked as Ex.D.2, at one place the property is mentioned as site No.18 and subsequently it is corrected and mentioned as site No.9. This aspect is relevant and the same has to be appreciated at the time of final judgment while considering the title of defendant No.3. However, this court is of the opinion that the said discrepancy itself shows that there is a dispute regarding the identity and location of the property claimed by defendant No.3.

12) Further, defendant No.3 has also produced a decree of permanent injunction in respect of site No.9 which is marked as Ex.D.1. But, the plaintiff is not a party to the said suit. But, it is a circumstance to show that the defendant No.3 is not totally making a new claim regarding

site No.9. Therefore, without expressing any opinion regarding the title, validity of the documents, this court finds that local investigation is necessary only for the limited purpose of the identifying the physical situation, boundaries and possible overlap of the properties claimed by the parties.

13) The plaintiff has also contended, that documents relied on record are sufficient. But when both parties are relying upon documents mentioning site no.9 and when boundaries are different, local inspection will be helpful to understand the real controversy. Therefore, considering the nature of dispute, this court is of the opinion that appointment of court commissioner is necessary for proper adjudication of the matter. Accordingly, I answer **Point No.1 in the Affirmative.**

14) Point No.2: In view of the forgoing observations and discussions, I proceed to pass the following:

O R D E R

**I.A. No.X filed by the defendant
No.3 under Order 26 Rule 9 read**

with Section 151 of C.P.C. is hereby allowed.

The Commissioner shall inspect the plaint schedule and written statement schedule property.

The Commissioner shall inspect and identify the properties with reference to the documents produced by both the parties and prepare a sketch showing the location of plaint schedule and written statement schedule property, their boundaries, existing physical features and whether both properties are one and the same or whether they are different.

The Commissioner fee is tentatively fixed at Rs.2500/-.

(Dictated to the Stenographer, transcribed and typed by him, revised, corrected and then pronounced by me in the open Court on this the **13th Day of January 2026**).

Sd/-

(SHRINIVAS PATIL)

I Addl. Civil Judge & JMFC
Harihar

