

KADG520000202012



IN THE COURT OF PRL.CIVIL JUDGE AND JMFC, HONNALI.

:: PRESENT ::

Sri. Manjunath Banakar,

B.A. LL.B (Spl).,

Prl.Civil Judge & JMFC,

Ramdurg.

Dated this day of 27th July 2026.

O.S No.237/2012

Plaintiff : Mahalakshamma and another
V/s

Defendant : Mallikarjunaiah and others.

Parties to IA No.II

Petitioner/ : Mahalakshamma and another
Plaintiff V/s

Opponent/ : Mallikarjunaiah and others.
Defendant

* * * *

ORDER ON I.A.No.II.

The present I.A.No-II had been filed on-25-04-2015 under Order XXVI Rule 9 of C.P.C, praying to appoint the court

commissioner for measure the suit schedule property, however the said application was kept in abeyance as per the orders of this court dated-05.12.2016 and after the conclusion of evidence of both side and when the stage is reopening for further cross examination of PW-1 counsel for plaintiff has urged to consider the said application. Hence now at the stage of further cross examination of PW-1 I.A.No-II which is filed under Order XXVI Rule 9 of C.P.C, is comes to the consideration.

2. The said I.A.No-II is appended with the affidavit of the Plaintiff No-2 and wherein he has affirmed that, Plaintiff No-1 and 2 are the absolute owners of the suit schedule property, they instituted the suit seeking declaration of title, recovery of possession and mandatory injunction against the defendants, he has further state that, his father by name Shivappa had sold only Site No. 40 and Site No. 41 to the wife of first defendant, each having specific and limited measurements. However, they allege that the first defendant in collusion with the officials of the Town Panchayat, fraudulently secured entries showing a larger extent of land than what had actually been conveyed under the sale deed. Based on those incorrect entries, the first defendant is alleged to have transferred the excess portion of land to the third defendant. He has further contend that the defendants have encroached upon their remaining property which are identified as site No-40/1 and 41/1 by extending construction beyond the land legally purchased by them. According to him, a portion of their land is still vacant, but the defendants

are attempting to claim and occupy that portion also by relying on manipulated records. They assert that the defendants have denied these allegations, thereby creating a serious dispute regarding the identity, boundaries, and actual extent of the suit property. To resolve this controversy, the plaintiffs filed an application under Order XXVI Rule 9 CPC, requesting the Court to appoint a Court Commissioner, preferably a Civil Engineer from the Public Works Department (PWD), to conduct a local inspection and scientific measurement of the suit property as well as the property claimed by the third defendant. He submit that such inspection is necessary to ascertain the true physical features, exact measurements, location of constructions, and the extent of encroachment, if any and said Commissioner's report would assist the Court in properly adjudicating the dispute and in arriving at a just decision and appointment of a Commissioner would not prejudice the defendants in any manner. On the contrary, if the present application is not allowed it would cause irreparable loss and hardship to the plaintiffs, because the actual position of the property would remain uncertain, thereby affecting their rights. They therefore pray that the Court appoint a Court Commissioner for local inspection and measurement of the suit property in the interest of justice.

3. Per contra, the counsel for Defendant No-3 filed his detailed objection, wherein he has denied the entire averments made in the affidavit accompanying to the

application. Main contentions of defendant No. 3 is that, plaintiffs application for appointment of a Court Commissioner is not maintainable at the present stage of the suit, either on facts or in law. It is alleged that the plaintiffs have filed the application only to harass defendant No. 3 and to unnecessarily prolong the proceedings. According to the defendant, the affidavit supporting the application does not disclose any genuine or valid grounds for seeking a local inspection. Further he contends that already sufficient materials are available on the record to just adjudication of real controversy between the parties, hence at this juncture if the present application is allowed, it would creates the confusion on the mind of the court. Hence on these grounds he sought for dismissal of application.

4. Heard the arguments of both side.

5. After going through the averments made in the affidavit and objection statement following points are arise for determination of this Court:-

1. Whether the plaintiffs have made out sufficient grounds to for appointment of Court commissioner?

2. What order ?

6. This Court has answer to the above points are as under:-

Point No.1 : In the Negative.

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

R E A S O N S

7. Point No.1 : The learned Counsel appearing for the plaintiff as well as defendant have argued vehemently by reiterating the contentions taken in the Course of their respective pleadings.

8. The scope of Order XXVI Rule 9 of the CPC is very limited. In any suit in which a local investigation is required or proper for the purpose of elucidating any matter of dispute may appoint a Commissioner. It is settled law that, the parties are required to prove their own case by way of evidence, therefore it is the duty of plaintiff/defendant to first give evidence in support of their case. After the evidence of parties, if Court deems it proper that any issue requires clarification then the Court may appoint a Commissioner. The report of Commissioner is merely a piece of evidence and not binding on the court. It can be used for the purpose of appreciating the evidence came on record. The main object of Order XXVI Rule 9 of CPC is not to assist a party can procure the same. No doubt, before appointing an commissioner, Court shall examine pleadings, relief claimed and real controversy between parties. Court has to keep in mind there from to decide whether there is an actual necessity to appoint Court commissioner to decide any real controversy between parties. No doubt Court Commissioner

cannot be appointed for making an inquiry about factum of possession of the property in dispute, which is nothing, but fishing of information and not elucidating any matter in dispute.

9. The plaintiffs have instituted the present suit seeking the relief of declaration as that they are the absolute owners of the suit schedule properties and rectification of the sale deed in the year of 1999 by correcting the southern boundary and limiting the sale only to Site No- 40 and 41 and rectification of the 2007 sale deed and correction of property measurements and mandatory injunction directing the defendants to demolition of the alleged illegal construction and delivery of vacant possession and also for direction to the Town Panchayath to correct the municipal records. Therefore the initial burden is casted upon the plaintiffs that their propositus Shivappa was the owner of Site No-40, 41, 42, 40/1 , 41/1 and 42/1 and wherein he was sold only the Site No-40, 41 to the wife of the Defendant No-1 and after the said sale transaction existence of Site No-40/1 and 41/1 at the southern boundary of the said Site No-40, 41 and also to be establish that through over sight boundary of the southern side was wrongly mentioned in the sale deed executed in favour of the wife of the defendant No-1. The said aspect has to be proved by them by adducing the oral as well as documentary evidence. The plaintiffs have already adduced oral as well as documentary evidence to substantiate their respective pleadings.

10. The suit is primarily one for declaration of title, rectification of registered sale deeds, mandatory injunction and recovery of possession. The principal controversy revolves around the interpretation of registered documents, the intention of the executants, correctness of municipal records and the respective title of the parties. These issues are purely legal and documentary in nature and cannot be effectively resolved through a local inspection by a Court Commissioner. The Commissioner is neither competent to decide disputed questions of title nor to express any opinion regarding the legal effect of the documents relied upon by the parties.

11. It is the specific case of the plaintiffs that the measurements recorded in the Town Panchayath records are manipulated and that the boundaries mentioned in the registered sale deed require rectification. On the other hand, the defendants have categorically denied these allegations and have asserted that the measurements, boundaries and sale deeds are genuine and valid. Thus, the very foundation of the dispute concerns historical facts and documentary evidence existing from the year 1999 and subsequent transactions. A Commissioner appointed in the year 2026 cannot ascertain the factual position that existed on the dates of execution of the sale deeds or at the time of the alleged encroachment. Consequently, the proposed local inspection would not materially assist the Court in deciding the real issues.

12. The evidence of both parties has already been concluded and each party has been afforded sufficient opportunity to adduce oral and documentary evidence in support of its respective case. The present suit is in the year of 2012, therefore it is the 14 years old case of this court. If a Commissioner is appointed after closure of evidence, the Commissioner's report would inevitably give rise to fresh objections, applications, cross-examination of the Commissioner and possible requests for further evidence. Such a course would unnecessarily reopen the trial, prolong the proceedings and defeat the object of expeditious adjudication of civil dispute.

13. This Court is also of the considered opinion that a Commissioner's report prepared at this advanced stage is likely to create unnecessary confusion rather than facilitate adjudication. Since the parties are asserting conflicting measurements, boundaries and possession, any report based on the present physical features of the property may not correspond with the condition prevailing on the date of institution of the suit or on the dates of the disputed transactions. Such a report may unintentionally shift the focus of the Court from appreciating the evidence already recorded to collateral issues arising out of the Commissioner's observations. The Court must adjudicate the rights of the parties on the basis of the pleadings, oral evidence, documentary evidence and settled principles of law and not on a subsequent factual exercise which may neither reflect the original state of affairs nor conclusively determine

the disputed rights.

14. It is settled law that the parties are required to prove their own case by way of evidence. In order to elucidating the facts in respect of the matter in dispute the evidence adduced by the parties itself is sufficient to this court for come to the proper conclusion regarding the matter in issues. The Court commissioner will be appointed only in a peculiar nature of the matter in dispute both the parties documentary or oral evidence cannot be led into. But, in the present case on hand, the oral and documentary evidence adduced by the rival parties are enough to answer issues, which were already framed. There is no ambiguity in the evidence adduced by the parties. In such being the case there is no need to appoint Court commissioner as prayed by the plaintiff. Under these circumstance this court does not find any reason to consider the application filed by the defendant. Hence, this Court has answered the above point in the Negative.

15. Point No.2 : In view of the aforesaid detailed discussion and findings on the Point No.1 in negative, this court proceed to pass the following:-

ORDER

The I.A.No.II filed by the plaintiff's Under Order XXVI Rule 9 of C.P.C. is for seeking relief of appointment of commissioner for local inspection is hereby dismissed.

No order as to costs.

Case again posted for further
cross examination of PW-1 as finally
and last chance.

(Dictated to the stenographer through on-line computer, typed by her,
corrected by me and then pronounced in the open Court today the 27th
day of July , 2026)

(Manjunnath Banakar.)

Prl. C.J & JMFC., Honnali

