

KADG520006452023



IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC.,
AT HONNALI.

Dated on this 5th day of March 2026.

PRESENT:

Sri.Devadas H. B.A., LL.B.,
Prl.Civil Judge & JMFC.,
Honnali.

O.S.No.181/2023

PLAINTIFF : Sri.Veerashekhara
V/s

DEFENDANTS : Sri.Panchaksharappa and Others

I.A No-VII

Applicants/ : Sri.Panchaksharappa and others.
Defendants

V/s

Opponent/ : Sri.Veerashekhara
Plaintiff

* * *

ORDER ON I.A. No.VII

When the matter has been posted for arguments, the defendants have filed the present application under Order XXVI Rule 9 of C.P.C., seeking for appoint a Taluk Surveyor of Honnali

Taluk in order to ascertain the encroachment over the suit schedule properties by allowing the application.

2. The reasons assigned in the affidavit annexed to the application are that the plaintiff had made allegations that, the defendants have encroached the suit schedule properties and it is very much difficult to ascertain the encroached area without appoint the Court Commissioner. Hence they have filed the present application seeking for appoint a Court Commissioner in order to ascertain the encroachment over the suit schedule properties and the appoint of the Court Commissioner is very much necessary in order to proper adjudication of the matter in dispute. It is further stated that, if the present application is allowed no prejudice or hardship would be caused to the plaintiff and on the other hand same is not allowed the defendants would be put to untold hardship. Hence prays to allow the application.

3. Per contra, the learned counsel for the plaintiff has filed objection, wherein he has denied the entire reasons stated in the affidavit filed in support of the accompanying application. In addition to denial contend that, the plaintiff has filed the present suit that the defendants have encroached the suit B schedule property and also seeking for declaration to declare that, the plaintiff is the absolute owner of the suit B schedule property. Further contend that, the defendant No.5 in his examination-in-chief and during the course of his cross-examination stated, they have not encroached the suit schedule properties belongs to the

plaintiff and DW1 during the course of his cross-examination stated that, there is no objection from them with regard to the plaintiff's peaceful possession and enjoyment over the suit A and B schedule properties. Further in instant suit already the Taluk Surveyor had conducted the survey and submitted report and the Surveyor examined as DW3 and through him got marked documents and fully cross-examined. Further contend that, when the matter has been posted for arguments at that stage, the defendants have filed the present application only with an intention to protract the proceedings. Hence prays to dismiss the present application with exemplary costs.

4. Heard arguments on both counsels.

5. After going through the reasons stated in the affidavit and objection statement following points would arise for determination of this Court :-

1. Whether the defendants have made out sufficient grounds 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 defendants 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. An Advocate Commissioner can be appointed under Order XXVI Rule 9 of CPC inter-alia for elucidating any matter in dispute. No doubt, before appointing an advocate 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. Further before discussing the present case in hand this Court has relied upon the order passed by the **Hon'ble High Court of Karnataka Kalaburagi Bench in W.P.NO.201274/2022 (GM-CPC) in between Sri Shadaksharappa S/o Veranna and Kumari Vijayalaxmi D/o Pampanna and Others** wherein specifically discussed that as under :-

“21. Having examined the provisions referred to above and given the fact that Order XXVI of the Code of Civil Procedure is often invoked in the trial court, this court is of the view, broadly speaking in the following cases, the appointment of an appropriate Commissioner as provided under Order XXVI of the Code is desirable.

- (i) The dispute relating to the easement of air, light, pathway, road, watercourse, etc.
- (ii) The dispute relating to the boundary, encroachment;
- (iii) The dispute relating to forgery;
- (iv) The dispute relating to the existence or otherwise 23 watercourse, road, pathway, pollution, or nuisance.

10. With this prelude this Court has discuss the case on hand. Upon hearing the arguments advanced by the learned counsel for the plaintiff and defendant and on perusal of the records it is reveals that the plaintiff has filed the present suit against the defendants seeking for the relief of declaration and mandatory injunction.

11. Through this application the defendants seeking an appointment of Court Commissioner in order to conduct local inspection of the suit schedule properties in order to ascertain the encroachment over the suit schedule properties. Further the plaintiff has instituted the present suit seeking for declaration and mandatory injunction. In response to the suit summons the defendants have appeared before this Court and filed their written statement and based on the pleadings of the parties, this Court has framed issues and then the GPA holder of the plaintiff himself examined as PW1 and got marked as Ex.P1 to Ex.P37 and in support of his relief got examined one more witness as PW2 and thereafter, the defendants in support of their defence, the defendant No.5 himself examined as DW1 and through him got marked as Ex.D1 to Ex.D32 and examined two witnesses as DW2 and DW3 and among them DW3 is Surveyor. Further in the instant suit the defendants have conducted the survey through Surveyor and also examined him as DW3 and he has been fully cross-examined.

12. On perusal of the citation it is reveals that, in suit if there is dispute that whether the encroachment made or not then the Court Commissioner can be appoint in order to ascertain that whether the encroachment made or not, but in the instant suit the plaintiff already conducted the survey through Surveyor and the Surveyor submitted the survey reports and also the Surveyor examined as DW3 and through him identified the survey documents and DW3 has been fully cross-examination. At this juncture, the appointment of the Court

Commissioner does not arise and the said citation is not applicable to the present case in hand, because in this suit already the defendants have conducted the survey through Surveyor and submitted the reports before this Court and also they have examined the Surveyor as DW3 and through him identified the survey documents and fully cross-examination. In such being the case once again 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 defendants. Hence, this Court has answered the above point in the Negative.

13. Point No.2 : In view of findings on Point No.1, this court proceed to pass the following:-

ORDER

The I.A.No.VII filed by the defendant's Under Order XXVI Rule 9 of C.P.C., is hereby dismissed.

No order as to costs.

(Dictated to the stenographer through on-line computer, typed by her, corrected by me and then pronounced in the open Court today the 5th day of March, 2026)

(Devadas H.)

Pr.C.J & JMFC., Honnali

(Order pronounced in the open court vide separate order)

ORDER

The I.A.No.VII filed by the defendant's Under Order XXVI Rule 9 of C.P.C., is hereby dismissed.

No order as to costs.

Call on for arguments R/by 06.03.2026.

(Devadas H.)
Pri.C.J & JMFC., Honnali

