

KADG520019792016



IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC. AT HONNALI.

Dated on this 23rd day of June 2026.

PRESENT

Sri. PUNYAKOTI S N

B.A LLB.

Addl. Civil Judge & JMFC.,
Honnali .

ORIGINAL SUIT No.312/2016

Plaintiff : Solle Thirlappa

V/s

Defendant : Mallesh Naik

Parties in I.A No-XVI

Petitioner : Mallesh Naik

Defendants

V/s

Opponents/ : Solle Thirlappa

Plaintiff

Orders on IA No. XVI

The defendant has filed an application under Order 26 Rule 9 of C.P.C, to appoint Taluka surveyor as Court commissioner for the purpose of local inspection of suit schedule property in the ends of justice and equity.

2. The reasons ventilated by the plaintiff in the affidavit

annexed to the application are that, suit schedule property is Sy.No.178 and Sy.No.91 are one and the same. Defendant's RTC coming in the different names but properties are one and the same and are cultivating the same land. The survey report has given wrong conclusion. Hence local survey of the suit land is necessary to find out whether suit property are one and the same. Hence it is necessary to appoint a court commissioner to ascertain the suit schedule property and property of the defendant. Hence prays to allow the application.

3. On the other hand the plaintiff filed objection to the application, wherein he denied the averments made in the affidavit accompanying to the application and further stated that, both side evidence is completed, suit schedule property is in possession and enjoyment of the plaintiff since from 1986. Further the suit schedule survey number is also demarcated in village map of Hanumasagara village. Whereas Sy.No.178 of RTC produced by defendant is not in existence in the village map of Hanumasagara village.

4. Further stated that, if the court commissioner is appointed it amounts to the collection of the evidence. Land in Sy.No.178 is not existed in suit land Sy.No.91/P2. The possession of the property in a suit for bare injunction has to prove by the parties. Hence prayed to dismiss the application.

5. Heard arguments on both counsel.

6. After going through the application with affidavit, points arise for my consideration are ;

1. Whether the defendant made out sufficient grounds for appointment of court commissioner?

2. What order ?

7. My answer to the above points are as under:

Point No.1 : In the Affirmative.

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

REASONS

8. POINT No.1:- The plaintiff has filed this suit for the relief of permanent injunction with respect to the suit schedule property

9. The contention of the defendant is that, he is in possession and enjoyment over the agricultural land bearing Sy.No.178 for an extent of 4 acre 30 guntas. The said property and suit schedule property are one and the same but RTCs showing different survey numbers. It is pertinent to note that, the defence of the defendant in the written statement is as what he put his contention in the application.

10. In order to ascertain whether the suit schedule property and alleged property of the defendant are one and the same or not, the surveyor has been examined as CW-1 but he deposed that he does not know whether the suit schedule property and property in Sy.No.178 are one and the same or not. Further deposed that, he has not gone to the suit schedule property to ascertain the same.

11. Whether the question of boundaries, identity of the

property is raised, it can be ascertained through court commissioner for proper adjudication of the lis.

12. At this juncture, it is useful to refer the ratio laid down by the Hon'ble High Court of Karnataka, reported in 2023 SCC Online Kar 53 (Shadaksharappa Vs kumari Vijayalakshmi) in para 24, it is held as under “ Having examined the provisions referred to above and given the fact that order XXVI of 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 Code is desirable.

(i)....

(ii) The dispute relating to the boundary, encroachment;

(iii)...

(iv) .

In the present suit also there exists a serious dispute regarding the identity i.e., boundaries of the suit schedule property. Hence it is just and necessary to appoint a Taluka surveyor as Court commissioner as prayed by the defendant to inspect the suit schedule property and the property in Sy.No.178 of Hanumasagara village and report the same. Considering all these aspects, if the application is allowed no prejudice will be caused to the plaintiff. Moreover it is necessary for proper adjudication. Hence I Answer point No.1 In Affirmative

13. POINT No.2 :- In view of the reasons assigned above, this court proceed to pass the following order.

ORDER

IA.No.XVI filed by the defendant

Under Order XXVI Rule 9 of CPC is hereby allowed. Taluka surveyor, Honnali is appointed as court commissioner.

Commissioner's fee is tentatively fixed at Rs.3,000/-. Defendant is directed to deposit commissioner fee.

No order as to costs.

Addl. Civil Judge and JMFC.,
Honnali.