

**IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC., PUTTUR**

Present :- Shri. Devaraj. Y.H B.A. L., LLB.

I Addl. Senior Civil Judge & J.M.F.C., Puttur.

Dated this the 9th Day of April-2026

FDP. No.4/2004

PETITIONER: Shri. Subrahmanya Bhat

V/s

RESPONDENTS: Shri. B. Narayana Bhat and others

**ORDERS ON THE MEMO FILED BY THE COURT
COMMISSIONER**

Heard counsel for both parties and the court commissioner.

2. The court commissioner filed memo and stated that on 13-07-2019, he visited the suit property, held survey work and also the properties were identified with the assistance of surveyor. Further stated that on 01-03-2026 when the court commissioner visited the suit property for the purpose of conducting spot inspection before effecting division of the property, there was representation from all parties except, respondent no.9- Venkateshwara Bhat. Advocates, Sri.K.R.A.,

J.K., V.R.G.P., M.I.B & S.R. were present. Though the court commissioner visited the property after serving due notice to all the parties through 'Whats up' and 'personal phone calls', unfortunately, the iron gate put up on the roadway leading to the suit property and the residential building occupied by respondent no.9 was locked. Further there was a thick growth of bushes and wild plants in a portion of suit property, hence only having a glance at the outer boundaries of suit property the court commissioner was compelled by the circumstances to return, as such he could not able to execute the commissioner work. Further the court commissioner in the memo prays for to provide police protection to commissioner work, Kadaba Police Station and sought permission to break open the lock put up on the iron gate and to open any obstruction to the free right of way caused due to human intervention at the suit property and also sought permission for the clearance of wildly grown gross and weeds on the survey lines. Thus prays to allow the memo.

3. Counsel for the respondent no.9 filed detailed objection and submits that the iron gate in question is situated within the self acquired property belonged to the respondent no.9 in survey no.169 measuring to an extent of 2.35 acres. It is stated that in the said property respondent no.9 is having absolute right, title and possession as well there exists a residential building and the said property is not also available for partition.

4. Further stated that the observation made by the learned court commissioner are without adequate basis or supporting material and the road passing through the said iron gate leads exclusively to the properties belonged to the respondent no.9. it is stated that the suit B schedule property being waste land could have been accessed through other available portions without entering upon the self acquired property of respondent no.9 and it concerns A schedule property. Further stated the allegation made in the memo by the court commissioner is misconceived and untenable. Further stated that the court commissioner is expected to act

within the scope of warrant issued by this court and to maintain neutrality and any action beyond the scope of authority confirmed under law would be improper. Hence prays to accept the objections of the respondent no.9, set aside or suitably modify any directions sought in the memo to the extent that they affect the lawful possession of respondent no.9 and pass such other orders as deems fit to grant under circumstances of the case.

5. Perused the records. Admittedly this court has appointed the court commissioner and directed him to conduct the commissioner work afresh by demarcating the suit properties in terms of the preliminary decree and additional preliminary decree with the assistance of surveyor attached to the respective ADLR office, Puttur or Kadaba Taluk whoever concerned and to submit the report.

6. As per the direction of the court, court commissioner appeared to be visited to the suit properties on 01-03-2026 for conducting of spot inspection before affecting division of property and it appears respondent no.9 was not present or

their advocate and rest of the parties have been represented through their advocates who were present at the spot. As per the memo, it can be inferred that there was a iron gate put up on the roadway leading to the suit property and the residential building existed therein which was occupied by the respondent no.9 was also locked and it was also noticed by the court commissioner that there was thick growth of bushes and wild plants in the portion of suit property, hence he only had the glance at the outer boundaries of the suit property and was compelled to return from the spot as such he could not able to execute the commissioner work as directed by this court and sought for to provide police protection to conduct commissioner work from the Kadaba Police Station and sought permission to break open the lock put up on the iron gate and to open any obstruction to the free right of way caused due to human intervention at the suit property and to permit clearance of the wildy grown gross and weeds on the survey lines. It has also mentioned in the memo that without providing police protection and also granting the possession to break open the lock of iron gate

and to clear and permission to clearance of wildy grown gross and weeds on the survey lines the execution of commissioner work is not possible.

7. At the time of hearing on the memo, counsel for the respondent no.9 submitted that respondent no.9 was unable to present personally on 01-03-2026 due to unavoidable circumstances for cause of his illhealth. It also submitted that the court commissioner given due notice to conduct the spot inspection on 01-03-2026. Further stated that respondent no.9 remains willing and ready to cooperate with the court to facilitate the survey in a lawful, orderly and non obstructive manner subject to protection of which lawful possession and peaceful enjoyment of the possession.

8. On perusal of the records and hearing of court commissioner and counsel for the respondents, it clarifies that respondent no.9 was not present on 01-03-2026 when the court commissioner visited the suit properties for the purpose of conducting spot inspection before effecting division of property.

9. Since the Court commissioner is appointed to execute the commissioner work as per the preliminary decree and additional preliminary decree passed by this court, it is essential to all the parties and counsels appearing for the said parties to provide every assistance to the court commissioner to execute the commissioner work and any obstructions or in assistance by the parties or counsels appearing for the parties is unwarranted. Since counsel for the respondent no.9 as stated that respondent no.9 remains willing and ready to cooperate with the court to facilitate the survey in a lawful, orderly and non obstructive manner subject to protection of which lawful possession and peaceful enjoyment of the possession, this court proceeds to pass the following.,

ORDER

Memo filed by the court commissioner is partly allowed.

Permission denied to the court commissioner to break open the lock put up on the iron gate allegedly which is

existed in the property of the respondent no.9.

Police protection is granted to the court commissioner to conduct the commission work to facilitate him to conduct the commissioner work effectively. In that regard PSI, Kadaba Police Station is directed to provide proper protection to the court commissioner for to execute the commissioner work.

Respondent no.9 is directed to provide assistance to the court commissioner and permit the court commissioner as well the advocates appearing for the respective other parties as well parties to this petition to use the roadway through the iron gate which existed in his property in order to reach the suit schedule properties which is helpful to conduct the commission work.

Permission is granted to the court commissioner for clearance of the widely grown grass and weeds on the survey lines of the suit properties for execution

of the commission work as sought by the court commissioner.

Court commissioner is directed to note all the developments to be taken in the spot at the time of conduct of commission work and conduct the commission work without affecting the lawful rights of any parties to the petition and submit the report.

Office is directed to issue intimation to the PSI, Kadaba Police Station to provide necessary Police protection to the court commissioner to execute the commission work.

(Typed myself in the Laptop, Printout taken by the Stenographer, revised, corrected and then the Order pronounced in the Open Court on this 9th day of April -2026)

(Devaraj.Y.H.,)
I ADDL. SR. CIVIL JUDGE & JMFC
PUTTUR