

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE & A.C.J.M., AT PUTTUR**

:: PRESENT ::

**SMT. PRAKRITI KALYANPUR, LL.M.,
PRL. SR. CIVIL JUDGE & ACJM,
PUTTUR**

O.S. No.49/2021

DATED THIS THE 10th DAY OF SEPTEMBER 2025

PLAINTIFF:

Smt. Eliamma,
W/o E.P. Isac,
Aged about 55 years,
R/at Bethel 1-133/67,
Swarnagiri Layout,
Padavinangady Konchadi Post,
Mangalore.

[By Sri. B.N.P., Advocate]

V/s.

DEFENDANTS:

**1. Abdul Khadar @ Sanu (Since dead by
LR's),**

a). Zoharabi (Since dead by LR's)

b). Zakeer,
S/o Late Abdul Khader,
Aged about 40 years,

c). Khaleel,
S/o Late Abdul Khader,
Aged 38 years,

d). Thaslima,
D/o late Abdul Khader,
Aged 35 years,

e). Noor Mohammad,
S/o Late Abdul Khader,
Aged 27 years,
All R/at Hoigekere,
Kodimbala Village,
Kadaba Post,
Kadaba Taluk, D.K.

[D1(b)&(c) By K.R.A., Advocate]

[D1(a) - Dead]

PARTIES TO THE I.A.NO.III

Applicant: **Smt. Eliamma,**

V/s.

Opponents: **Abdul Khadar @ Sanu (Since dead by LR's),and others**

ORDERS ON I.A.III

The plaintiff has filed I.A.No.III u/o. XXVI rule 9 of CPC seeking for appointment of Court Commissioner to note down new building built in plaint C schedule property with the help of qualified surveyor.

2. The application is annexed with the affidavit of the plaintiff wherein she has stated that the

defendant has constructed new building in plaint C schedule property without obtaining license from Panchayath. On 27.07.2021 when the husband of the plaintiff objected to the said construction, defendant has threatened him. Thus the defendant has encroached the plaint B schedule property and plaintiff has filed OS No.7/2015 before the Addl. Civil Judge & JMFC., Puttur. The defendant contents that the building is in Sy.No.314/2(P1) and not in C schedule property. Hence to show the same, it is necessary to appoint Court Commissioner.

3. The defendant has filed objection stating that Commissioner cannot be issued for collection of evidence. Hence prays to reject the IA.

4. Heard both sides and perused the materials available on record.

5. Now the point that arise for my consideration is that:

1. Whether the plaintiff has made out sufficient grounds for the appointment of commissioner for spot inspection?

2. What order?

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

Point No.1: In the Affirmative;

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

REASONS

POINT No.1:

7. The plaintiff has filed this suit for declaration, possession and Injunction. The case of the plaintiff is that, the defendant has encroached a portion of the A schedule property.

It is pertinent to refer the following decisions:-

In **ILR 2001 KAR 5013** between **Anil Kamalakara Shirodkar Vs. Doodappa Santhu Patit**, the Hon'ble High Court of Karnataka has held that '*it is just and necessary that a survey has to be conducted and the boundaries of the properties are to be identified. In such a situation appointment of commissioner should not be mistaken for collecting evidence*'.

In **ILR 2002 KAR 3599** between **Annappa Mestha Vs. Mutayya Achari**, the Hon'ble High Court of Karnataka has held that '*appointment of commissioner can be restored to only in cases where, either from the records or from the evidence, it is not possible for the court to determine the dispute*'.

W.P.No.201274/2022(GM-CPC) **dated**
24.01.2023 between Shadaksharappa Vs/ Kumari
Vijayalaxmi and others., *wherein the Hon'ble High*
Court of Karnataka has laid down the guidelines of
appointment of Commissioner and held that
Commissioner may be appointed if his report is
essential for elucidating the matter in dispute.

8. In the case on hand it is seen that the plaintiff has averred that the defendant has encroached her land. This can only be proved by local inspection. Therefore the plaintiff has made out grounds for appointment of commission. Hence, I answer the Point No.1 in the "**Affirmative**".

POINT No.2:

12. For the aforesaid reason, I proceed to pass the following:

: O R D E R :

I.A.No.III filed by the Plaintiff
U/o.XXVI Rule 9 of CPC is hereby allowed.

(Dictated to the stenographer, directly on computer typed by him, then corrected by me and pronounce in open court on this the 10th day of **September 2025**)

(PRAKRITI KALYANPUR)
PRL. SR. CIVIL JUDGE & ACJM.,
PUTTUR

(Order pronounced in the open Court
vide separate Order sheet)

: O R D E R :

I.A.No.III filed by the Plaintiff
U/o.XXVI Rule 9 of CPC is hereby allowed.

**PRL. SR. CIVIL JUDGE & ACJM.,
PUTTUR**