

**IN THE COURT OF SENIOR CIVIL JUDGE &
JMFC, BELTHANGADY, D.K. DISTRICT**

:PRESENT:

**SRI. MANU B.K., *B.A.L., LL.M.*,
Senior Civil Judge & JMFC,
Belthangady, D.K. District**

Dated, this the 29th day of June 2026

O.S./31/2024

PLAINTIFF:

**Sri. Jayakumar,
S/o. Kaliyappa,
Aged about 52 years,
One of the Partner in
“Team Four Developers”
Vignesh City Complex
Main Road, Belthangady,
Belthangady Taluk,
D.K.-574 214.**

**(By Sri. P.K.S., Advocate)
-V/s-**

DEFENDANT:

**Godfrey D Cunha,
S/o. John J. D Cunha,
Aged about 72 years,**

R/at:Opp.Padma
Electronics,
Guruvayanakere, Kuvettu
Village, Belthangady-
574217

(By Sri. Y.R.K., Advocate)

PARTIES TO I.A.No.IV

Petitioner/Defendant: **Sri. Godfrey D Cunha**

-V/s-

Respondent/Plaintiff: **Sri. Jayakumar**

**ORDERS ON I.A.No.IV FILED BY THE
DEFENDANT UNDER ORDER XXVI RULE 2 &
3 AND SEC.151 OF CPC**

The defendant has filed this application
seeking for appointment of court commissioner

to record of evidence of defendant.

2. In the memorandum of facts annexed to the application, the defendant has stated that, he is aged about 75 years, hence he could not appear before the Court to give evidence. Therefore, appointment of commissioner is necessary to record his evidence. Ergo, the defendant sought to allow the application.

3. As against the application filed by the defendant, the plaintiff has filed objection by contending that, the defendant is capable to appear before the Court. There is no merit in

the application. If the defendant appear before the Court personally, Court can record his demeanor of witness during cross examination, hence the plaintiff sought for rejection of application.

4. Heard the arguments of learned counsel for both side.

5. The points that arise for my consideration are;

1. Whether the defendant proves that the appointment of court commissioner is essential to elucidate the real question on controversy between the parties ?

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

7. **POINT No.1:** On careful perusal of material available on record, it appears that the plaintiff has filed this suit against the defendant seeking the relief of Specific Performance of Agreement dated 28.09.2017. The order sheet would depicted that, the evidence of plaintiff is completed and matter is at the stage of defence evidence.

8. If the application filed by the defendant is perused, it clearly unravels that, the defendant is seeking for appointment of Court commissioner as he could not appear before the Court. The main reason mentioned in the memorandum of facts for appointment of Court commissioner is the age of the defendant. The defendant has contended that, he is aged about 75 years. In this background if the objection filed by the plaintiff is perused, it appears that the plaintiff also not disputed the age of the defendant. Further, on perusal of cause title of the plaint, it further unravels that, the defendant was aged

about 72 years as on the date of suit. Ergo, the defendant being aged person, it may be difficult for him to appear before the Court to subject himself for the test of cross examination or to lead evidence. Therefore, by considering the age of the defendant, this Court is of the view that the appointment of Court commissioner is necessary.

9. In the objection filed by the plaintiff, he has contended that, the defendant is capable to appear before the Court and Court commissioner may not be possible to record the demeanor of the witness. However, the

said contention is not maintainable. The age of the defendant itself unravels that, he is not able to appear before the Court. The Court commissioner being the representative of the Court has every right to record the demeanor of the witness. Therefore, appointment of the Court commissioner is not going to cause harm to the plaintiff.

10. On perusal of application filed by the defendant and objection filed by the plaintiff, what would unmistakably emerge is that, the defendant is aged person, hence it is difficult for him to appear before the Court. Moreover,

if the Court commissioner is appointed, then no injury will be caused to the plaintiff as the Court commissioner will conduct commission work in presence of Advocate appearing for the combating parties. On the other hand, if the application is not allowed, then the defendant's right to manifest his defence by leading evidence will be defeated. As such, this Court is of the view that the defendant has made out sufficient grounds for appointment of Court commissioner to record evidence of the defendant. Therefore, for the praefatus reasons, this Court answering point No.1 in the **AFFIRMATIVE**.

11. **POINT NO.2:** In view of findings on the Point No.1, this Court proceed to pass the following:

ORDER

The I.A.No.IV filed by the defendant under Order XXVI Rule 2 and 3 and Section 151 of C.P.C. is hereby allowed.

The learned counsel for the parties are hereby directed to specify the name of Advocate to appoint him/her as Court commissioner by 08.07.2026.

No order as to costs.

(Dictated to the typist online, then corrected and pronounced by me in the open court on this 29th day of June 2026)

(MANU B.K.)

Senior Civil Judge & JMFC
Belthangady, D.K.