

KADW020035862024



IN THE COURT OF PRL. CIVIL JUDGE & JMFC,
DHARWAD

Present:

Sri. Kadappa Hukkeri.

Prl. Civil Judge & JMFC., Dharwad.

Dated this the 02nd day of July, 2026

O.S. No.514/2024

Plaintiff:

Smt. Hema W/o Anand Hembli and others.

(By Sri. Parande P.S., Adv.)

V/s

Defendants:

Smt. Mallavva W/o Adivappa Hembli

(D-1, 3 & 4 by Sri. N.N.B., Adv.)

(D- 2 by Sri. M.B.C., Adv.)

PARTIES TO I.A.NO.V

Applicant :

Smt. Lata W/o Jagadish Hembli

Vs/-

Opponent :

Smt. Hema W/o Anand Hembli and
others.

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1. Provision under which the application is filed	I.A No.5 U/O 26 Rule 9 R/w Sec.151 of CPC.
2. Relief sought for	Prayer to appointment of the court commissioner
3. The date on which the application is filed	25-01-2025
4. Number of the application	I.A No.5
5. The date on which the objection filed by different opponents	04-07-2025
6. The date on which the orders were passed on the said application	02-07-2026

ORDER ON IA NO.V

This is an application filed by the defendant Nos.1, 3 and 4 under order 26 Rule 9 R/w Section 151 of CPC appointment of court commissioner.

2. In the application the defendant No.3 has stated that the court commissioner may be appointed to measure the suit properties situated at Shukruwarpeth Hosiyaallapur, Dharwad. If the application is allowed no hardship will be cause to the plaintiff. Hence, they prayed to allow the application.

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3. On the other hand, the plaintiff objected the application by contending that the application filed by the defendant Nos.1, 3 and 4 is not maintainable they have not mentioned sufficient reasons for appointment of the court commissioner. The plaintiff has filed the present suit by questioning the partition deed equal share in the shop is not allotted to the parties to the deed. Therefore the plaintiff has filed the present suit. Therefore she prayed to reject the application.

4. Heard the arguments. Perused the materials on the record. The points for consideration are as follows.

1. Whether the defendants Nos.1, 3 and 4 have made out ground for appointment the court commissioner?
2. What order ?

5. The findings of the court on the above points are as follows.

Point No. 1 : In the Negative.

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

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REASONS

6. **Point No.1:** The plaintiff has filed the present suit for seeking declaration that partition deed dated 27-09-2022 is null and void and seeking 1/6th share in the suit properties. In the plaint the plaintiff has stated that at the time of alleged partition her husband has signed the partition deed without knowing the terms and conditions and details of the property allotted to him. After the partition husband of plaintiff Anand Hembli died on 14-04-2023 at Dharwad leaving behind plaintiffs as such his legal heirs.

7. The defendants have contended that the partition was taken place among the family members long back 35 years and partition deed was executed on 27-09-2022 during life time of deceased Anand Hembli. Therefore the plaintiff has no right to seek partition in the suit property.

8. On going through the pleadings of the parties it is clear that the plaintiff is disputing the partition deed dated 27-09-2022. It is the contention of the plaintiff that the

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partition was effected properly, her husband has signed the partition deed without knowing any terms and conditions and particular of the property. When the matter is at initial stage the defendant Nos.1, 3 and 4 have appeared but the defendant Nos.5 and 6 are not appeared as suit summons was not reissued. At this stage the defendants have filed this application for appointment of court commissioner. In the application for what purpose they are appointing the court commissioner is not properly explained and reasons are not assigned under order 26 Rule 9 a court commissioner can be appointed illustration matter dispute between the parties. In the application defendant Nos.1, 3 and 4 have not properly explained and reasons for appoint of the court commissioner. Under such circumstance they have not made out grounds for appointment of the court commissioner. The plaintiff is not disputing the execution of partition deed. Therefore under such circumstance appointment of court commissioner do not serve any purposes. Hence, Point No.1 is answered in the Negative.

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9. **Point No.2** : In view of findings on point No.1, this court proceeds to pass the following orders:

ORDERS

IA No.5 filed under Order 26 Rule 9
R/w 151 of CPC is hereby rejected.

Reissued suit summons to the
defendant Nos.5 and 6.

Call on 28-07-2026

(Dictated to the stenographer, typed by her, corrected by me and then pronounced in the open Court, on this the 02nd day of July 2026).

(Sri. Kadappa Hukkeri)
Prl. Civil Judge & J.M.F.C.,
Dharwad.