

ORDERS ON MEMO OF INSTRUCTIONS

It is to be noted that as per order of this Court dated 16.03.2026 on IA No.5, the Taluka surveyor has been appointed as court commissioner for ascertaining the existence of 60 feet layout/CDP road in Survey No.20/15.

2. The both parties have filed the memo of instructions.

3. Heard the learned counsel for plaintiff and also learned counsel for defendant on the memo of instructions filed by both parties.

4. It is to be noted that the learned counsel for plaintiff has objected the memo of instructions filed by the counsel for defendant. Whereas learned counsel for defendant has also submitted his arguments on the memo of obstructions filed by the counsel for plaintiff.

5. It is significant to note that the plaintiff has filed the present suit for relief of permanent injunction for restraining the defendant, his agents, and servants, or any other authorized persons by restraining them from causing any type of obstructions to the plaintiff for peaceful possession and enjoyment of the suit road.

6. The defendant appeared through counsel and filed the written statement and said written statement has been got adopted as objection to IA No.I. It is appropriate to extract the description of the suit property for easy reference.

Description of Suit road.

All that piece and parcel of the 60 feet CDP Road earmarked in agricultural land bearing Survey No.20/15 being designated 60 feet situated at Attikolla village, Hobli Dharwad, Taluka: Dharwad, District: Dharwad, measuring 11 Gunta, 7.25, Anna land bounded on:

East by	:	Road (From Sy. no.20)
West by	:	Survey No.17(First party's property)
North by	:	Road, and other part of Sy. No.20
South by	:	Park

7. It is significant to note that the plaintiff is claiming that there is existence of 60 feet CDP road in land bearing No.20/15 at Attikol Village, Taluk Dharwad.

8. It is relevant to note that, this Court has passed Order on IA No.5 and appointed the Taluka surveyor to ascertain about the existence of 60 feet road as claimed by the plaintiff in Survey No. 20/15.

9. The learned counsel for defendant has filed the memo of obstructions wherein there are 6 points have been pleaded in the memo of instructions filed by the counsel by the defendant with respect to whether any 60 feet road exist in the said Sy.20/15 as per the CDP or any approved level plan, to verify whether any portion of Site No.20/15 has been acquired by the government for formation of road, if so, to furnish the details and also, whether any road existed in Site No.20/15 as per the record of any competent or statutory authority, and to measure the property with reference to revenue records, survey maps, CDP plans, any other relevant official documents, and clearly demarcate the same in the sketch to be annexed with report, and to submit detailed report along with sketch map indicating measurements, boundaries, alleged road portion, if any, within the time

stipulated by the Hon'ble Court, and to ascertain whether plaintiff has obtained the approved layout, any other relevant permission from the competent authorities plan with respect to Site No.17 and 18 of Attikolla Village.

10. It is significant to note that the Lis between the parties is existence of suit road in Sy. No.20/15 and right of plaintiff to use the said road. Whereas the defendant after appearance before court has filed the written statement and has denied about existence of 60 feet road and also contended that plaintiff has filed suit to grab the valuable property belonging to the defendant.

11. Further, from memo of obstructions filed by the counsel for defendant, it clear that the said memo of obstruction also are not necessary to the court commissioner to comply the order of this court passed on order IA no.5.

12. Even the memo of instructions filed by the learned counsel for defendant are not in compliance and consonance with order of this court passed on IA no.5. Therefore this court is of opinion that the Commissioner is required to ascertain whether is there any 60 feet road existed in Sy. No.20/2015. The memo of instructions filed by the learned counsel for plaintiff would go to show that

the appointment of Court Commissioner is only with respect to ascertaining about existence of 60 feet road in Sy.20/15. Hence the memo of restrictions of defendant travels beyond the order of the appointing the court Commissioner dated 16.03.2026. Therefore, the both memo instructions filed by parties are not in compliance and are not in consonance with the order passed by this Court on Order IA No.5. Thus, both memo instructions have to be rejected. Therefore after having consideration of allegation of both parties, pleadings and order on IA No.5 the following points are framed for conducting commission work by the Court Commissioner, Thus this Court proceeds to pass following:

ORDER

The memo of instructions filed by learned counsel for plaintiff and also memo of instructions filed by the learned counsel for defendant are hereby rejected.

Consequently the following points are framed for giving findings by the Court Commissioner.

1.	Whether there is any 60 feet road existed in Survey No. 20/2015 of Attikol Village, Taluk District,
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	Dharwad?.
2.	If road is existed, what is the measurement of the said road in Sy.20/15?

The court commissioner has to submit the report along with Map.

In order to avoid the delay as stated in the objection of the learned counsel by defendant to the IA no.5, the date of survey is fixed on 12.04.2026.

It is made clear that both parties will not entitle any notice of date of survey from the court commissioner.

Both parties be present along with their counsels on date of survey.

Issue Court Commissioner warrant if PF and Court Commissioner fee is deposited.

For report call on 16.04.2026.

Prl., Civil Judge & JMFC.,
Dharwad.