

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,
B.A. LL.B.,
I Additional Senior Civil Judge and JMFC.,
Hubballi.

O.S. No.331/2023

Dated this the 27th day of November, 2025

Plaintiff/s : Sri. Ramnath S/o Gurunathasa
Jituri.

.Vs.

Defendant/s : Sri. Laxman S/o Gurunathasa
Jituri and others.

PARTIES TO I.A. No.XV

Applicant/s : Vishnu G. Jituri and others.
(Def. No.2, 4 to 6)

.Vs.

Opponent/s : Sri. Ramnath S/o
(Plaintiff) Gurunathasa Jituri.

- i. Provision under which : Under Order 26 Rule 11
application is filed R/w Sec.151 of CPC
- ii. Relief sought for : Seeking to appoint a
Receiver/Commissioner
i.e., an Advocate to keep
accounts and to collect the

rentals from the respective tenants in the suit property and to submit the report.

- iii. The date on which : 14.03.2025 application is filed*
- iv. Number of the : XV application*
- v. The date on which : 26.03.2025 objections are filed by different opponents*
- vi. The date on which : 27.11.2025 orders were passed on the said application*

ORDERS ON I.A. UNDER ORDER 26 RULE 11 R/W. SECTION 151 OF C.P.C.

The defendant No.2, 4 to 6 have filed this I.A. under Order 26 rule 11 r/w.Sec.151 of C.P.C. seeking to appoint a Receiver/Commissioner i.e., an Advocate to keep accounts and to collect the rentals from the respective tenants in the suit property and to submit the report.

- 2. The defendant No.1 has filed objections.*
- 3. Heard, perused the pleadings and materials placed on record.*
- 4. The points for consideration are;*
 - 1. Whether defendant No.2 and 4 to 6 having denied the collection of rentals in*

their written statement, can seek a commission to take accounts of such rents ?

2. *Whether issuance of commission under Order 26 Rule 11 is justified ?*
3. *What order ?*

5. *The above point No.1 and 2 are answered in the negative and point No.3 is as per final order, for the following;*

REASONS

6. **Point No.1 and 2:** *This is the suit filed by the plaintiff against the defendants for the relief of partition and separate possession and declaration. The brief facts of the affidavit is that the defendant No.1 taking undue advantage of his dominance and also his name appearing in the records of the suit properties, is collecting the rentals from the respective tenements in the suit property and enjoying the rentals since many years, thereby the defendant No.2 and other defendants will be deprived of our legitimate share in the rentals. The defendant No.1 is not accounting the rentals and other income derived from the suit properties and is enjoying the same solely. It is further submitted that other defendants also filed another application seeking necessary directions thereby directing the defendant No.2 to deposit the rentals in this case in this Court. If at all a direction as sought or issued, it will not be useful, the defendant may indulge in tampering the*

accounts and may not deposit the correct and exact rentals may also misappropriate the amounts. Therefore, need has arisen for defendant No.2 and 4 to 6 to seek an appropriate relief for appointment of receiver, so as to avoid unwarranted and illegal misdeeds or misappropriation of amounts in the form of rentals and other income derived from the suit property and therefore, it is necessary to appoint a Court receiver. Hence, this application and prayed to allow the application.

7. The objections of the defendant No.1 is that the defendant No.2 and 4 to 6 claiming to be in joint possession and enjoyment of the suit property, has no right to seek such prayer against the defendant No.1. The proviso under Rule 11 of Order XXVI is only for examination or adjustment of accounts. But the prayer what the defendant No.2 and 4 to 6 have sought, does not meet out the ingredient and criteria of the proviso under Order XXVI Rule 11 of CPC. The tenant who has been named in the affidavit has not at all made as the party to this suit. The defendant No.2 and 4 to 6 have not made any prayer for accounts or to receive the rentals from this defendant and defendant No.2 and 4 to 6 have not made out any grounds to allow the application. It is further submitted that, and it is settled principle of law that, the defendant No.2 and 4 to 6 must establish the reasonable probability of ultimate

success in getting the order for direction against any defendants and prima facie there must be a determination of rights over the property. Only on the assumption set out in the affidavit, the plaintiff cannot make any good and valid grounds to allow the application. As such, the plaintiff has failed to meet out the criteria of a proviso under Order XXVI Rule 11 of CPC and prayed to dismiss the application.

8. *Admittedly, this is the suit for partition and separate possession of the suit schedule property against the defendant. Wherein this suit when the matter is set down for plaintiff evidence, the counsel for defendant No.2 and 4 to 6 have filed the present application seeking an appointment of a receiver or commissioner to keep accounts to collect the rentals. On the other hand, the defendant No.1 strongly objected the above said application on the ground that in the written statement the defendant No.2 and 4 to 6 categorically denies the plaintiff allegation that rentals are being collected, then they cannot move and application later on the above said provision. Therefore, they prayed for dismiss the application.*

9. *On perusal of the entire materials available on record it is noticed to the Court that no doubt Order 26 Rule 11 of CPC empowers the Court to issue a commission for examination of accounts, appointment of*

a commissioner to take accounts when (a) accounts are complicated, (b) parties admit that accounts exists, (c) there is a dispute regarding quantum, (d) and not when the existence of accounts itself is denied. But, in the present case on hand the defendant No.2 and 4 to 6 in their written statement have categorically denied the plaintiffs allegation that rentals are being collected. In this regard I would like to refer the para No.9 and 10 of the written statement of defendant No.2, 4 to 6 is as follows:

9. The content of the pare 8 of the plaint to the effect that no partition is effected till this date and plaintiff requested defendant to effect partition, defendant postponed because they are enjoying the rentals and also carrying on their business in the suit properties etc and that defendants refused to partition etc. are all created and concocted story on the part of the plaintiff same be put to strict proof.

10. The contents of the para 9 of the plaint to the effect that defendants are receiving the rentals of commercial premises and therefore they are not ready to share the return and rentals to the plaintiff and are creating third party interest over the suit properties etc. are all created and concocted story on the part of the plaintiff to suit his ulterior motive.

10. In their written statement they have categorically denied the plaintiffs allegation that the defendant No.1 collects rentals from lease holders and it is implied that they themselves are in possession of the

property, they are carrying on business in the suit schedule premises, they are enjoying the income and the allegation of the rental collection is false and concocted. Having taken this clear stand, they cannot now turn around and file an application to appoint a commissioner to take accounts of rental collection allegedly made by defendant No.1. The law does not permit a party to take inconsistent and self contradictory stands. Hence, the application appears to be an after thought and contrary to their pleadings. Therefore, no grounds are made out to exercise discretion under Order 26 Rule 11 of CPC. Hence, this Court is of the opinion that the defendant No.2 and 4 to 6 have not established their contention before the Court. Hence, I answer the **point No.1 and 2 in the negative.**

11. **Point No.3:** In view of findings on point No.1 and 2, this court proceeds to pass the following:

ORDER

The I.A. No.XV filed by the defendant No.2 and 4 to 6 under Order 26 Rule 11 r/ w.Sec.151 of C.P.C. is hereby dismissed.

(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **27th day of November, 2025**)

sd/-
(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge & J.M.F.C.
Hubballi.