

KAMS500004122023



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : **Sri. Kamalaksha D., B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 23rd day of February 2026

R.A./32/2023

Appellant : Bhaskar

-V/s-

Respondents : N.R.Subramanya and others

I.A. I

Applicants : Bhaskar

.. appellant
(By Sri. R.K., Adv.)

-V/s-

Opponents : N.R.Subramanya and others
... respondents

**ORDER ON I.A.I FILED UNDER ORDER
26 RULE 9 R/W SECTION 151 OF CPC**

The appellant filed this application for appointment of Taluk Surveyor/Tahasildar to measure the land and fix the boundaries in respect of the suit schedule property of Sy.No.38/1 measures 13 guntas and Sy.No.38/2 measures 21 guntas, totally measures 34 guntas situated at Goddanapura Village of Nanjangud Taluk.

2. In the affidavit the appellant sworn that, the appellant is the plaintiff in O.S.534/2012, it is filed before the Trial Court for the relief of declaration and injunction. Admittedly the suit schedule property allotted to the 2nd defendant by his father Kalegowda through the Will, after acquiring the property by the 2nd defendant he sold in favour of the 1st defendant through the sale deed dated 09.12.1997. It is admitted fact that remaining 24 guntas belongs to the plaintiff. The defendants are not having any manner of right, title and interest over the property. It is further submitted that, likewise the land bearing Sy.No.38/2 measures 1 acre 31 guntas, out of which 10

gunta sold by the 2nd defendant in favour of the 1st defendant through the sale deed dated 30.07.2001. Admittedly remaining 11 guntas belongs to the 1st plaintiff. The subject matter of the suit is the excess property other than the property purchased by the 1st defendant. The old survey number is 38, thereafter it is poded as 38/1 and 38/2. The 1st defendant is not the owner of the entire property mentioned in the Sy.No.38/1 and 38/2. The plaintiff already produced the revenue records to show the entire Sy.No.38/1 and 38/2 of Goddanapura Village. To ascertain the matter in dispute the appointment of commissioner is just and necessary. Similar application was filed by the plaintiff in Trial Court under Order 26 Rule 9 of C.P.C. for appointment of commissioner, but that application came to be dismissed by the Trial Court on technical ground. In that application, the applicant sought the relief to measure the schedule property and other neighbouring land. The Trial Court while passing the order made an observation that the plaintiff has no right to survey the neighbour land since they are not parties to the

suit. In that observation the application filed by the plaintiff in the suit for appointment of court commissioner was dismissed on 04.11.2022. Similar application is filed before this court for appointment of commissioner.

3. Per contra, the 1st respondent filed objections to reject the application mentioning that the application has no merit and filed to drag the case and harass the respondents. The appellant has no locus-standi to file this application and the application under reply. The application is filed to mislead the court. Out of the total extent of land in the suit schedule property Sy.No.38, Kalegowda S/o Doddegowda purchased an extent of 2 acres and 4 guntas of land under the sale deed dated 24.01.1963. Kalegowda is the father of M.K.Shivanna. M.K.Shivanna is the deceased 1st plaintiff in the original suit and the father of the 2nd plaintiff who is the appellant herein and brother of the 2nd defendant in the suit. Kalegowda apart from M.K.Shivanna and Govindegowda had another son by name Pacchegowda. Later Sy.No.38

was poded into 38/1 measuring 22 guntas and Sy.No.38/2 measures 1 acre 31 guntas. Kalegowda under a registered Will dated 12.07.1989 bequeathed an extent of 1 acre 10 guntas to the 2nd defendant in Sy.No.38/2. The remaining extent of land in Sy.No.38/2 is 21 guntas. The appellant or respondents No.2 to 4 have no right, title or interest over the application schedule property and they are not in possession and enjoyment of the same. However, they filed simple application to drag the matter. Hence, prays to reject the application.

4. Heard. Perused pleadings and materials placed on record. The points that arise for consideration are:

1. Whether the appellant made out sufficient grounds to appoint the court commissioner at this juncture?

2. What order ?

5. The above points are answered as follows :-

Point No.1 : In the affirmative

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

REASONS

6. **Point No.1:-** As mentioned above, the suit was filed before the Trial Court for the declaratory relief and permanent injunction. The suit was came to be dismissed by the Trial Court. The learned counsel for the appellant/ plaintiff submits that similar application was filed before the Trial Court, but it was dismissed. Now after disposal of the matter in the Trial Court the plaintiff filed similar application for appointment of court commissioner. It is to be noted that, suppose the order of the Trial Court for appointment of court commissioner was wrong, the plaintiff/ appellant had every chance to challenge the same. However, he waited up to end of trial and made another attempt to appoint the court commissioner. It is to be noted that suppose application is not allowed, it will not stop the dispute between the parties. Suppose commissioner is appointed and submit his report, the defendants will have every chance to put cross-questions or testify the veracity of the report of the commissioner. As

mentioned above, suppose application is not allowed, the dispute will not end here. The purpose of trial is only to adjudicate the matter effectively and forever, otherwise dispute will not see an end. Therefore, **point No.1** is answered **in the affirmative**.

7. **Point No.2:-** In view of the findings on the above point, this Court proceeds to pass the following:

ORDER

I.A.I filed by the appellant under Order 26 Rule 9 r/w Section 151 of C.P.C. is allowed. No order as to cost. The Taluk Surveyor is appointed as commissioner to measure the property and submit report.

(Dictated to the stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 23rd day of February 2026).

(Kamalaksha D.)
Senior Civil Judge & J.M.F.C.,
Nanjangud.