

KAHS610017402024



**IN THE COURT OF II ADDL CIVIL JUDGE AND JMFC AT
CHANNARAYAPATNA,HASSAN
Presided Over by SUNEETA**

**PRESENT:- Smt. SUNEETA ., B.A., LL.B.,
II Addl. Civil Judge &
JMFC, Channarayapatna.**

Dated 9th day of September 2025

O.S./405/2024

Plaintiff/s :

1. Nanjundegowda S/o late S.Nanjappa
aged 66 years

2. Hemalatha W/o Nagesha
aged 36 years

Both are R/o

Aruvanahalli village

Shravanabelagola Hobli

Channarayapattana Taluk

Hassan District

(By Sri **K.J.D** Adv.,)

V/s

Defendant/s :

1. Shivegowda S/o late S.Nanjappa
aged 70 years
2. Manjappa W/o Shivegowda
aged 66 years
3. Ramesha S/o Shivegowda
aged 40 years
4. Paramesha S/o Shivegowda
aged 38 years.

All are R/o
Aruvanahalli village
Shravanabelagola Hobli
Channarayapattana Taluk
Hassan District

(D1 to 4 by **K.N.K Adv.**)

I.A.No.2

Applicants:

Nanjundegowda and others

(Plaintiffs)

V/S

Opponents:

Shivegowda and others

(defendants)

**ORDER ON I.A.NO.II FILED BY THE
PLAINTIFF/APPLICANT U/O XXVI RULE IX R/W
SECTION 151 OF CPC.**

The I.A.No.2 filed by the plaintiff U/O XXVI Rule 9 of CPC to appoint court commissioner i.e., seeking prayer to appoint an Advocate as Court Commissioner to inspect the spot and to ascertain as to whether there is road and plaintiff is using the said road in order to reach the his property .

2. It is contended in the affidavit filed in support of I.A.No.2 that, the plaintiff has filed present suit for relief of declaration to declare that the plaintiff has easementary right of way over the suit property and the consequential relief of permanent injunction. Further stated that, there is a alternative road to reach the property of the plaintiff. Therefore it necessary to appoint the commissioner to inspect the suit

property and submit the report. If this application is allowed no hardship will be caused to the other side and sought for allowing IA No.2.

3. The learned Counsel for the defendant submitted that he has no objections to allow this IA No.2.

4. This is suit for the relief of declaration to declare that the plaintiff has easementary right of way over the suit property and the consequential relief of permanent injunction restraining the defendants with the right of user of the suit road either by blocking the road or by causing any obstruction of whatever nature across the said road. The defendants contended that there is a alternative road to reach the property of the plaintiff. Having regard to the contention taken by the rival parties there is serious dispute with regard to existence of road. Therefore in order to ascertain and adjudicate upon the

question of existence suit road, it is necessary to appoint the Court commissioner. Further it would assist the Court in properly appreciating as to whether there exists road or not. Since the learned counsel for the defendants has consented to allow this application, Court is of the opinion that appointment of commissioner to inspect the spot and to note the existence of the suit road is very much necessary. On the other hand no hardship will be caused to the defendants. By considering all these, this Court proceed to pass the following;

ORDER

The IA No.II filed by the Defendant U/O.XXVI Rule 9 R/w. 151 of CPC is hereby allowed.

The court commissioner by giving prior notice to the both parties as well as advocates on record is to make local investigation of the suit schedule property and to submit the

report by following the memo of instructions may be filed by the parties. The court commissioner is directed to submit report within three weeks from the date of receipt of commissioner warrant from this Hon'ble Court.

Both the parties are hereby directed to file the necessary memo of instructions on the next date of hearing.

Call on for suggesting the name of court commissioner and to file memo of instructions and to fix the commissioner fee and PF, by:13-10-2025.

(Dictated to the stenographer directly on computer and typed by her, corrected, signed and then pronounced by me in open court on **9th day of September 2025**)

(Suneeta)

2nd Addl. Civil Judge and J.M.F.C.
Channarayapatna.