



**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **SRI. SRINIVASA. S.N.**
B.A., LL.M.,
Civil Judge and JMFC.,
Savanur.

O.S.NO.168/2015

DATED THIS 17th DAY OF FEBRUARY, 2026

Plaintiffs : Smt. Sainaz W/o Hazarat-ali Nadaf and another
[By Sri K.C.Patil, Advocate]

V/s.

Defendants : Sri Jahangeersab S/o Hazaresab Nadaf and
another
[By Sri N.S.Patil, Advocate]

PARTIES IN IA-XVI

**Applicant/
Defendant** : Sri Jahangeersab S/o Hazaresab Nadaf and
another

- V/s -

**Opponents/
Plaintiffs** : Smt. Sainaz W/o Hazarat-ali Nadaf and another

I	Provision under which the applications are filed	Order 26 Rule 9 read with section 151 of CPC
II	Relief sought for	To appoint an advocate as court commissioner to inspect the suit



		property and submit report
III	Date on which the application is filed	06-11-2025
IV	Number of applications	I.A.No.XVI
V	The date of which objections filed by the different opponent	21-11-2025
VI	Date on which the order was passed on said application	17-02-2026

**Civil Judge & JMFC.,
Savanur.**

ORDER ON I.A.NO.XVI

The defendant No.1 has filed I.A.No.XVI under Order XXVI Rule 9 r/w Section 151 of C.P.C., praying to appoint an Advocate as Court Commissioner with the assistance of PDO, Gram Panchayat Chillur-Badni, to conduct local inspection of the suit property in order to ascertain (1) whether there exists a residential shed over the suit property and (2) the boundaries of the suit property as shown in the hand sketch map, and to submit a detailed report with sketch, in the interest of justice and equity.

2. In the accompanying affidavit, the defendant no.1 has stated that the plaintiffs have filed this suit against defendants for permanent injunction in respect of suit property. The suit property is owned by defendant no.1 and his brother and the



defendants are in actual and physical possession over the suit property. In this case they have furnished some of photography's for showing actual situation of suit property and House (Shed) constructed by them over the suit property and obtained electrical connection from concerned HESCOM in his name. But during the oral evidence P.W-1 has denied that, there is no house over the suit property. Hence at this juncture it is just and necessary to make an inspection from the court commissioner so as to come out the truth of matter, so as to avoid controversy between the parties to this suit. Further stated that the defendants are in actual and physical possession over the suit property since year 2000 till date and same is using as back yard and one shed as shown in the hand sketch map. But plaintiffs purposely denied as there is no shed in the suit property. Hence the plaintiffs suppressed an actual situation of said suit property and also plaintiffs claim that defendants have constructed residential shed over the suit property. The conflicting stands taken by defendants and plaintiffs with regard to situation of property and shed situated over suit property. So as to verify and confirm that, whether actually there is shed in the suit property as shown in the hand sketch map or not. To know the above said conflicting stands taken by the parties to the suit, the appointment of court



commissioner for making local inspection is highly required at this juncture. The report of court commissioner will help the Hon'ble court to decide the right of the parties on merit in the ends of justice. Without the court commissioner report, truth will not come out before the Hon'ble court. Hence appointment of court commissioner is just and necessary to come to the proper conclusion, looking to the facts and circumstances of case on hand. If the said application is not allowed, it will cause heavy and irreparable loss to defendants. If allowed no harm or injury will be caused to other side. Hence, the applicant prays to allow the application.

3. Per contra, the plaintiff counsel have filed objections contending that the application and its supporting affidavit are all false, frivolous and vexatious one. The suit of the plaintiff is one for permanent prohibitory injunction against the defendants in respect of the suit properties which one measuring East-West 30 feet, North-South 99 feet within the specified boundaries. Further the plaintiff have pleaded that the number of the suit property was then the VPC No.210 which one purchased by Chamansab S/o Peersab Nadaf as a Manager of the joint family of the plaintiffs on 31-05-1984 from his vendor F.G. Kalmath for valuable consideration, in pursuance of the said sale deed his name got



appeared in the Village Panchayat Records. Then under the family arrangement the said Chamansab released the suit properties in favour of both plaintiffs with a view to construct a building thereon. Accordingly their name got appeared in the VPC records under the resolution passed by the Chillur Badni Village Panchayat in its subject No.10/4 dated 18-12-2013. The plaintiffs and their elders since the date of purchase till this day were and are using the suit properties to stock fodder, cow-dung, fire wood etc.

The defendants nowhere and nowhere concerned either to the suit properties or to the family of the plaintiffs, but high handedly by creating some illegal documents have threatened the plaintiffs to dispossess them from the suit properties. Hence this suit came to be filed. That the defendants in their cross examination admitted that the date of purchase of the suit properties from F.G. Kalmath by Chamansab Nadaf. Further they pleaded that both plaintiffs and defendants are related with each other. In the year 1984 both family members were living in tenancy-in-common without any partition in the family. The Chamansab S/o Peersab Nadaf was managing the whole family as he is shroud man. Further said that to purchase the said property the income of alleged whole family of the plaintiff and defendants



being utilized. Hence both plaintiff and defendants family was utilizing the same.

Further stated that as per the oral family arrangement/settlement the suit property as per the hand sketch of defendants the Chamansab S/o Peersab Nadaf has executed a Relinquishment Deed on 21-07-2000 in favour of the elder brother namely Shahajan S/o Hajaresab Nadaf by receiving Rs.19,000/- from them and so also handed over the actual possession. Further contrary to the above defense they pleaded that he again on 24-09-2012 executed two different deeds of "Relinquishment Deed" in the name of one Peerambi W/o Jahangirsab Nadaf as well as in the name of defendant No.2 by further receiving Rs.11,000/- by assuring by the Chamansab S/o Peersab Nadaf he will make the change of khatas etc.

Further defendant that their names didn't appear but names of the plaintiffs appeared by virtue of resolution dated 18-12-2013. Further in para 21 of the Written Statement that "once the Chamansab Nadaf had given up his right and possession over suit property by executed Relinquishment Deeds dated 24-03-2012 in respect of suit property in favour of the defendants. Subsequently he should not change earlier version" etc. Apparently as per the pleadings/defense of the defendants that by virtue of the alleged



deed dated 21-07-2000 and 24-03-2012 they are owners. Further specifically pleaded at para No.13 of their Written Statement like “thereafter these defendants have constructed house towards Western side of the suit properties in the year 2003 and got obtained electricity connection from HESCOM in the year 2004, but either in the contents of the written statement as well as their hand sketch nowhere pleaded about the boundary dispute in respect of both properties mentioned in plaint (Suit property) and in the written statement.

However the defendants have produced numerous documents like electricity bill, photographs, alleged unregistered 3 Relinquishment deed which are all marked on their behalf as exhibits. Defendants have adduced independent witnesses which are sufficient materials available in the case to determine the real lis between the parties. Further during the course of cross examination of DW1 there are numerous admission, to fill up such admissions and lacuna, the defendants knowingly moved the present application which one not permissible under the law and facts but the same being filed with an ill-motive to drag the proceedings. Therefore, prayed to reject the application with costs.

4. The points that would arise for the consideration of this court are as follows:-



POINTS

1. Whether the applicant/defendant no.1 have made out sufficient grounds to allow the I.A.No.XVI ?

2. What order?

5. The findings of this court on aforesaid points are as follows:-

Point No.1: In the Negative.

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

:-REASONS:-

6. Point No. 1:- The defendant No.1 has filed I.A.No.XVI under Order XXVI Rule 9 r/w Section 151 of C.P.C., praying to appoint an Advocate as Court Commissioner with the assistance of PDO, Gram Panchayat Chillur-Badni, to conduct local inspection of the suit property and submit report, in the interest of justice and equity.

7. The defendants counsel relied on the decision of Hon'ble High Court of Karnataka, reported in **ILR 2001 KAR 5013**, wherein this case there is alleged encroachment. But here there is no allegation of encroachment.

8. The plaintiffs counsel relied on the decision of Hon'ble High Court of Karnataka, reported in **2024 (1) KCCR 584**, wherein this suit is for the eviction of tenant.



9. This court has considered the averments in the application, objections filed by the plaintiffs and the material on record. The present suit is filed by the plaintiffs seeking the relief of permanent prohibitory injunction against the defendants restraining them from interfering with the peaceful possession and enjoyment of the suit schedule property. It is well settled that in a suit for injunction, the primary issues to be decided are possession and interference, which are required to be proved by the parties by leading oral and documentary evidence.

10. In the present case, the burden is upon the plaintiffs to establish their lawful possession as on the date of suit and alleged interference by the defendants. The defendants, on the other hand, have taken a specific plea that they have constructed a shed on the western side of the suit property in the year 2003 and have obtained electricity connection in the year 2004. In support of their contention, they have produced documents such as electricity bills, photographs and certain unregistered relinquishment deeds, which are already marked in evidence. Both parties have completed their oral evidence and the matter is posted for arguments.

11. Order XXVI Rule 9 of C.P.C. empowers the Court to appoint a Commissioner for local investigation where it deems such



investigation to be requisite or proper for the purpose of elucidating any matter in dispute. However, it is well settled that appointment of a Court Commissioner cannot be permitted for the purpose of collecting evidence or to fill up lacunae in the case of a party.

12. On careful perusal of records, the controversy between the parties primarily relates to possession over the suit property. The existence or otherwise of a shed and possession thereof are matters which the parties are required to establish through their oral and documentary evidence.

13. The defendants have already led evidence and produced photographs and electricity documents to substantiate their plea regarding the shed. The plaintiffs have denied the same in their evidence. Merely because there is a denial by plaintiffs, it does not automatically necessitate appointment of a Commissioner, particularly at the stage when the evidence of both sides is closed and the matter is posted for arguments.

14. In a suit for bare injunction, the Court has to adjudicate the rights of parties on the basis of pleadings and evidence adduced. Appointment of Commissioner at this stage to ascertain existence of shed or boundaries would amount to collection of fresh



evidence, which is impermissible. Therefore, this Court is of the considered opinion that the appointment of Court Commissioner is neither necessary nor proper for effective adjudication of the present suit at this stage. Therefore, this Court is of the considered opinion that the application is not filed for any legitimate purpose contemplated under Order XXVI Rule 9 of CPC. Accordingly, this Court has answered **Point No.1 in the Negative.**

15. POINT NO.2:- For the foregoing reasons, I proceed to pass the following;

ORDER

I.A.No.XVI under Order XXVI Rule 9
r/w Section 151 of C.P.C by the defendant
no.1 is hereby rejected.

(Dictated to the stenographer directly on computer, corrected, signed and then pronounced by me in the Open Court on this the 17th day of February, 2026)

**(SRINIVASA S.N)
Civil Judge & JMFC.,
Savanur.**