



**IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,
SAVANUR**

PRESENT: SRI SRINIVASA. S.N.

B.A., LL.M.,
Civil Judge & J.M.F.C.,
Savanur.

Ex.P.No.04/ 2010

DATED THIS 2ND DAY OF JULY, 2026

Decree Holder : Mahammadhanif S/o Akbarsab
Chittewale

V/s

Judgment Debtor: Hasansab S/o Mardansab Doddamani
since deceased repled. by his LRs and
others

PARTIES IN IA-XI

Applicant/Decree Mahammadhanif S/o Akbarsab
Holder : Chittewale

V/s

**Opponent/
Judgment
Debtors :** Hasansab S/o Mardansab Doddamani
since deceased repled. by his LRs and
others



i	Provision under which the application is filed:-	U/O.XXVI Rule 9 read with Section 151 of CPC
ii	Relief sought for :-	For appointment of the Chief Executive Officer, Town Municipal Council, Savanur, with the assistance of the Junior Engineer, Town Municipal Council, Savanur, as Court Commissioner.
iii	The date on which the application is filed :-	22-06-2026
iv	The date on which the objection is filed by different opponents:-	29-06-2026
v	The date on which the order was passed on the said application :-	02-07-2026

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

ORDER ON I.A.NO.XI

The Decree Holder has filed I.A. No.XI under Order XXVI Rule 9 read with Section 151 of CPC seeking appointment of the Chief



Executive Officer, Town Municipal Council, Savanur, with the assistance of the Junior Engineer, Town Municipal Council, Savanur, as Court Commissioner to inspect, measure, identify and demarcate the suit schedule property with reference to the decree schedule in O.S. No.82/1996 and to submit a report along with a sketch.

2. In the affidavit accompanying the application, the Decree Holder has contended that O.S. No.82/1996 filed for declaration and recovery of possession was decreed on 23.07.2005 and the said judgment and decree were confirmed in R.A. No.77/2005 on 07.09.2009. It is further stated that the earlier execution petition was dismissed on 16.07.2015 on the ground of discrepancy in the measurements mentioned in the decree schedule and the sale deed. Aggrieved by the same, the Decree Holder preferred Civil Revision Petition No.100062/2015 before the Hon'ble High Court of Karnataka, Dharwad Bench. By order dated 08.11.2024, the Hon'ble High Court set aside the dismissal order and remanded the matter to this Court with liberty to the Decree Holder to file an appropriate



application if any steps were required for identification of the property. It is further contended that the Judgment Debtors are disputing the identity and measurements of the property and therefore appointment of a Commissioner has become necessary for effective execution of the decree.

3. The contesting Judgment Debtors counsel has filed objections denying the averments made in the application. It is contended that the application is filed only to harass the Judgment Debtors and that there is no necessity to appoint a Commissioner. It is further contended that there is no post of Chief Executive Officer in the Town Municipal Council and therefore the application is not maintainable. Hence, they sought dismissal of the application.

4. Heard both the counsels and perused the records.

5. The point that arises for consideration is:

1. Whether the Decree Holder has made out sufficient grounds to allow the I.A.No.XI?

2. What order?

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



Point no.1:- Partly in the Affirmative,

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

REASONS

7. POINT NO.1:- It is an undisputed fact that the decree in O.S. No.82/1996 granting declaration and recovery of possession has attained finality. It is also not in dispute that this Court had earlier dismissed the execution petition on 16.07.2015 on the ground of discrepancy regarding the identity and measurements of the property.

8. The records further disclose that the said dismissal order was challenged before the Hon'ble High Court in Civil Revision Petition No.100062/2015. The Hon'ble High Court, while setting aside the order of dismissal, specifically observed that if any steps were required for identification of the property, the Decree Holder was at liberty to file an appropriate application before the Executing Court. The Hon'ble High Court has further observed that whenever there is a dispute regarding the identity of the property, the Executing Court can take appropriate steps so that the decree is executed in its true letter and spirit.



9. The contention of the Judgment Debtors that no Commissioner can be appointed in execution proceedings is not acceptable. Order XXVI Rule 18-A CPC specifically makes the provisions relating to commissions applicable even to execution proceedings. The object of appointment of a Commissioner in execution proceedings is not to collect evidence afresh or to modify the decree, but only to assist the Court in correctly identifying the decretal property so that the decree is effectively executed.

10. The Decree Holder counsel has relied on the decision of Hon'ble High Court of Judicature of Andhra Pradesh in **Gurram Anantha Reddy v. Katla Sayanna**, the Hon'ble High Court has held that the Executing Court has jurisdiction to appoint a Commissioner under Order XXVI Rule 9 CPC in execution proceedings for identification and localization of the decretal property and such appointment would facilitate effective execution of the decree. The Court further observed that successful decree holders should not be deprived of the fruits of the decree on technical



objections and that the Executing Court should ensure effective implementation of the decree.

11. In the present case also, the dispute raised by the Judgment Debtors is essentially with regard to the identity, extent and measurements of the property. Unless the property is properly identified on the spot with reference to the decree schedule and relevant records, there is every possibility of further controversy during delivery of possession. Therefore, appointment of a Commissioner would assist the Court in executing the decree correctly and would also avoid unnecessary future litigation.

12. However, this Court finds substance in the objection of the Judgment Debtors regarding the designation of the proposed Commissioner. Judicial notice can be taken of the fact that there is no post of Chief Executive Officer in a Town Municipal Council. The administrative head of the Town Municipal Council is the Chief Officer. Therefore, the prayer to appoint the Chief Executive Officer cannot be granted as sought.



13. At the same time, merely because the designation mentioned in the application is incorrect, the application itself cannot be rejected when the necessity for local investigation is otherwise established. The Court possesses ample powers under Order XXVI Rule 9 CPC to appoint a suitable Commissioner for effective adjudication of the matter.

14. Considering the nature of the dispute and the directions issued by the Hon'ble High Court, this Court is of the opinion that it would be appropriate to appoint the Chief Officer, Town Municipal Council, Savanur, with the assistance of the Junior Engineer of the Town Municipal Council, Savanur, to inspect the property, identify and demarcate the suit schedule property with reference to the decree schedule in O.S. No.82/1996, available municipal records, title deeds and other relevant records and to submit a report along with a sketch.

15. It is made clear that the Commissioner shall not decide any disputed questions of title or possession. The



Commissioner shall only identify, measure and demarcate the property with reference to the decree and the records produced before him. ***Accordingly, the point for consideration is answered Partly in the Affirmative.***

16. POINT NO.2:- In view of above reasons, this court proceed to pass the following;

ORDER

I.A. No.XI filed U/O. XXVI Rule 9 read with Section 151 of CPC by the Decree Holder is hereby allowed in part.

The prayer seeking appointment of the Chief Executive Officer, Town Municipal Council, Savanur is modified.

The Chief Officer, Town Municipal Council, Savanur, with the assistance of the Junior Engineer, Town Municipal Council, Savanur, is appointed as Court Commissioner.

The Court Commissioner is hereby directed to issue at least seven (7) days' prior notice to both parties, visit



and inspect the suit schedule property in their presence or in the presence of those who appear pursuant to such notice, and identify, inspect, measure and demarcate the suit schedule property with reference to the decree schedule in O.S. No.82/1996, the municipal records, title documents and other relevant records produced by the parties, and thereafter submit a detailed report along with a sketch/map to this Court.

Rs.4,000/- is tentatively fixed for Court Commissioner fees.

(Dictated to the Stenographer directly on computer, corrected and initialed by me and then pronounced in the open court on this day of 2nd July, 2026)

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