



IN THE COURT OF CIVIL JUDGE & JMFC., AT: AFZALPUR.

PRESENT

Sri. ANIL AMATE, B.A. L.LB(Hon's),
Civil Judge & JMFC.,
AFZALPUR.

Dated this the 25th day of July-2025

O. S. No. 32/2023

Plaintiff: Devindra S/o Anandappa Devaranadagi,
Age: 38 Years, Occ: Agriculture,
R/o Sonna Tq. Afzalpur.

(By Sri. S.K.P Advocate)

V/s

Defendants: 1) Suryakant S/o Basalingappa Kudari,
Age: 65 years, Occ: Agriculture,
R/o Sonna, Tq. Afzalpur.
2) Ambanna S/o Basalingappa Kudari,
Age: 63 years, Occ: Agriculture,
R/o Sonna, Tq. Afzalpur.

(Defendant No.1 and 2 By Sri. K.G.P Advocate)

PARTIES IN I.A.NO.I

Plaintiff: Devindra S/o Anandappa Devaranadagi,
Age: 38 Years, Occ: Agriculture,
R/o Sonna Tq. Afzalpur.

(By Sri. S.K.P Advocate)



V/s

- Defendants:**
- 1) Suryakant S/o Basalingappa Kudari,
Age: 65 years, Occ: Agriculture,
R/o Sonna, Tq. Afzalpur.
 - 2) Ambanna S/o Basalingappa Kudari,
Age: 63 years, Occ: Agriculture,
R/o Sonna, Tq. Afzalpur.

(Defendant No.1 and 2 By Sri. K.G.P Advocate)

ORDERS ON I. A. NO. III FILED U/ORDER 26 RULE 9 OF CPC

This application is filed by the petitioner U/O-XXVI Rule 9 R/W Sec. 151 of CPC seeking appointment Court Commissioner for local inspect of suit property and submits report along with map for showing the encroachment. The plaintiff is owner of house property No.8/69 and defendant is owner of the landed property bearing Sy. No. 41/2 measuring 06 acre 32 gunta situated at Ballundagi village.

2. The filed the present suit for the relief of declaration and perpetual injunction against the defendants in respect of suit property is about 2-3 guntas Southern portion of land ((East-West) Sy. No: 41/2 total measuring 6 acre 32 guntas situated at Village Ballundagi Tq: Afzalpur Dist: Kalaburagi. And further contended that the suit property is situated towards the Northern side of their land and also there is a Bund since about 60 years old and also having trees over there and to knock off the said Bund property the plaintiff has filed the present suit.



3. In the present suit, the plaintiff prayed for appoint the court commissioner to survey the suit properties himself and defendants and to draw the sketch to know that what extent of land is encroached by the defendants over his land and also regarding the bund as alleged by the defendants. And further contended that, if the application is allowed no loss or harm will be caused to the otherside, if not I will be put to great hardship and involved into multiplicity of litigations.

4. On the other hand Defendant No. 1 and 2 filed detailed objection to the I.A. No. III. and denied the entire averments made in the affidavits and further contended that the plaintiff filed application is not maintainable. The plaintiff has bad intention to grab the land of defendants. Hence, the present application and the present suit yet not evidence of plaintiff adduced. If the application is allowed it will prejudice to the defendants and it amounts to the collection of evidence. Therefore, the present I.A. No. III is not maintainable and prayed for reject I.A. No. III with cost.

5. Heard the arguments of petitioner counsel and perused the records.

6. The following points arise for my consideration is as follows:

: POINTS :

1. *Whether the I.A.No. III filed by the petitioner U/o XXVI Rule 9 of CPC is deserves to be allowed?*
2. *What order?*



7. My answer to the above points are as follows:-

Point No.1: - In the affirmative.

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

REASONS

8. **Point No.1:** The suit of the plaintiff is for the Declaration and injunction against the defendants. The plaintiff specifically contended that in the suit property 2-3 guntas towards souththern side of the suit property is encroached by the defendants. In respect of determine the encroachment over the suit property, the oral evidence is not sufficient. Therefore, its required to local inspection about the encroachment. In such a situation the Commissioner is appointed to find out the encroachment and possession its not prejudice to any party. The report based on local inspection will be a handy tool to decide the case relating to encroachment. In the case on hand, the defendant wants to prove there is no encroachment by him, the plaintiff filed the suit against him, instead of leading oral evidence of witnesses has applied for local inspection. In the case of Bhimappa Rayappa Chougala v. Shrikant, 2014 SCC OnLine Kar 12277 : (2014) 2 KCCR 1652 at page 1653, the Hon'ble court has held as under : "4. xxx Only if the plaintiffs can show that the defendants have encroached upon their property, they would be entitled to the relief. Any amount of oral evidence is not a substitute or sufficient to prove the encroachment. To cut short the litigation to reduce recording evidence, the trial Court in its wisdom, thought it fit to appoint a



Commissioner even before the commencement of the trial. That is how the duration of the litigation could be curtailed and speedy disposal of the civil matter could be achieved." Accordingly the point No.1 is answered in **Affirmative**.

9. **Point No.2** :- In view of my findings on Point No.1, I proceed to pass the following:

: ORDER :

I.A.NO. III filed by the Plaintiff under Order 26 Rule-9 R/W Section 151 of CPC is hereby allowed.

ADLR, Afzalpur is hereby appointed as court commissioner to make local inspection of suit property, effect the commission work as per the memo of instruction filed by both parties.

The both parties are hereby directed to on or before 02.08.2025 file a memo of instructions.

The commissioner is directed to visit the spot for local inspection and commissioner work on or before 16.08.2025 and both parties directing the parties to be present 16.08.2025 on disputed property, without expecting any process of issuance of notice to the them ,that 05.09.2025 is date is fixed for the submitting the report to the Court Fee of court commissioner is fixed at Rs.3,000/-.

KAKB320006102023



Issue commission warrant along with relevant documents
to the court commissioner if P.F. paid and fee deposited.

Call on 05.09.2025.

(Sri. Anil Amate)
Civil Judge, & JMFC.,
Afzalpur