



**IN THE COURT OF CIVIL JUDGE AND JMFC, JEWARGI
AT: JEWARGI.**

**Present:- Sri. KASHINATH V. UPPAR, B.Sc., LL.B.,
Civil Judge and JMFC, Jewargi.**

Dated : This the 15th day of February, 2025

O.S.No.32/2023

Between:

Laxmibai W/o Tippanna @ Appanna

:PLAINTIFF

(By Sri.A.M., Adv.)

And

1. Deputy Commissioner Kalaburagi & others

:DEFENDANTS

(By D1 & 4 by AGP, Adv.)

I.A.No.XI

Laxmibai W/o Tippanna @ Appanna

:Plaintiff/Applicant

V/s.

1. Deputy Commissioner Kalaburagi
& others :

:Defendant/Respondent

ORDERS ON IA No.V

The plaintiff has filed application U/o 26 Rule 9 of C.P.C. for appointing the Court Commissioner to survey the suit property to find the illegal encroachment in Sy.No.6/2.

2. The plaintiff sworn to an affidavit state that :

KAKB620004832023



The plaintiff has filed the suit against the defendants for the relief of declaration and mandatory injunction in respect of suit schedule property, the suit property was self-acquired property of the plaintiff and she has gifted 01 acre 04 guntas, land to the defendant No.5 school authority. Remaining portion of the suit schedule property she cultivate with the help of servants. Plaintiff has come to the knowledge that, defendants have illegally encroached about 01 acre in the remaining land of plaintiff except gifted property and construct the compound wall by the defendant No.5. Plaintiff has survey the suit land with private surveyor than plaintiff know about the illegal encroachment hence, plaintiff filed this present suit. It is just necessary to appoint the surveyor to survey the suit property to know that, whether encroachment is made or not in the suit property, if the surveyor is appointed and obtained the report it will be able to this court adjudicate the matter in disputed between the parties finally and effectively. If application is allowed no loss or harm will be caused to other side. On the other hand, if not allowed plaintiff will be put to great hardship and involved into multiplicity of the proceedings.

KAKB620004832023



3. The defendants have filed written objection to the application and contended that, In para-3 of the affidavit filed by the plaintiff in his application, it is false that, the defendants have encroached upon the property of the plaintiff apart from the gifted extent of the land. In the same para-3 of the affidavit it is stated by the plaintiff that has got surveyed the land once the land is surveyed question of surveying do not arise at all. It is the plaintiff to adopt other mode to prove their case. It is settled principles that, a commissioner cannot be appointed to see who is in the possession of the land. The powers of the Hon'ble court be delegated. The contents of para-5 of the affidavit are denied. It is false that, the commissioner report is the only source of the Hon'ble Court to come to court conclusive, appointment of commissioner is only in exceptional circumstances. The contents of para-6 of the affidavit are denied it is false that the defendants will not be prejudiced the case will be prolonged for a long period. The application is only files to prolong the case there are absolutely no grounds to allow the application.

4. Heard the arguments and perused the records.

5. The following points arise for my consideration.

Point No. 1:- Whether the plaintiff made out valid grounds to allow application?

KAKB620004832023



Point No.2:- What Order?

6. I answer the above points as follows:-

Point No.1 :- Affirmative

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

REASONS

7. **Point No.1:-** It is a suit for the relief of declaration and injunction that, plaintiff is owner of possessor of suit property measuring about 01 acre except the gift portion of land Sy.No.6/Aa2, out of measuring 05 acres 00 guntas. It is the case of plaintiff that, plaintiff is gifted the 01 acre 04 guntas in Sy.No.6/Aa2, to defendant No.5 to construct the school. Defendant No.5 is encroached the suit land belongs to the plaintiff along with gifted portion of land given by the defendant No.5. Hence, it is necessary to court commissioner to determine the alleged encroachment by the defendant in the suit schedule property.

8. The defendants denied the alleged encroachment by the defendants over the suit schedule property.

9. At this juncture, it is profitable to refer the ruling reported **in 2014 (2) KCCR 1652- between Bhimappa Rayappa Chougala V/s Shrikant and Others, wherein Hon'ble High Court held that " the suit is one for possession and injunction. The plaintiffs**

KAKB620004832023



claim, the defendants have encroached upon their property. Only if the plaintiffs are able to 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 litigation could be curtailed and speedy disposal of the civil matter could be achieved.”

10. Herein, the case on hand, the suit is for declaration and mandatory injunction regarding the alleged encroachment done by the defendant No.4. At this stage, this court is of the opinion that, the document produced by the plaintiff and defendant it is not sufficient to determine the real dispute between the parties to the suit. Hence, at this stage, this court is the opined that, to appoint ADLR Jewargi, as a court commissioner to conduct survey to determine the whether the defendant No.5 is encroached the 01 acre land belongs to the plaintiff. Moreover without the appointment of court commissioner cannot find out the alleged encroachment. As per above citation the court can appoint a commissioner to find out the actual situation. Hence, the application is to be allowed to

KAKB620004832023



meet the ends of justice and for proper adjudication.
Hence, I answered the point No.1 in the affirmation.

11. **Point No.2**:-For the above reasons I proceed to
the pass the following :-

: ORDER :

**The I.A.5 filed by the plaintiff
under Order 26 Rule 9 of C.P.C. is
hereby allowed with no cost and
appointed the ADLR Jewargi as Court
Commissioner.**

(Dictated to the stenographer, typed by him corrected by me,
and then pronounced in the open court on this the 15th day of
February, 2025.)

**(Sri. KASHINATH V. UPPAR)
Civil Judge & JMFC,
Jewargi.**

Visit ecourts.gov.in for updates or download mobile app “eCourts Services” from Android
or iOS