

Corrected and taken print.

**IN THE COURT OF THE I ADDITIONAL SENIOR
CIVIL JUDGE AND JMFC AT PANDAVAPURA**

Dated this the 20th day of February -2026

PRESENT

SRI.BABU N., B.com, LL.B.
I Addl. Senior Civil Judge & JMFC,
Pandavapura.

O.S.No.9/2021

PLAINTIFF : C.K.Venkatesh

V/s

DEFENDANTS : Vanajakshamma and others

PARTIES IN I.A.No.13

APPLICANT : K.Nagarejegowda
... 6th defendant

V/s

OPPONENT : C.K.Venkatesh
... Plaintiff

**ORDER ON I.A.No.13 FILED UNDER ORDER XXVI
RULE 9 R/W SECTION 151 OF CPC**

The defendant No.6 has filed the application to appoint the A.D.L.R., Pandavapura as court commissioner to measure and demarcate the suit schedule 1st item bearing Sy.No.72/1 and report whether it is in existence or acquired by the Town Municipality, Pandavapura.

2. In the affidavit annexed to the application it is stated that, suit schedule item No.1 had been acquired in the name of C.K. Devegowda, who during his life time concealed that it was his granted land even though it was acquired by the Town Municipality, Pandavapura for U.G.D purpose and that, the beneficiary is in possession of 0.24 guntas of land in the suit item No.1 and that, the defendants No.1 to 5 have declined that the suit schedule property is in existence and is in joint names of parties to the suit and they have claimed that they are the absolute owners of the property by creating concocted documents and hence in order to ascertain the real facts it is necessary to appoint the A.D.L.R., Pandavapura as court commissioner as prayed for in the application.

3. The application is resisted by defendants No.1 to 5 stating that, the 6th defendant has not produced documents to show that, the 7th defendant has acquired 0.24 guntas of land in suit schedule item No.1 and that, the 7th defendant has not filed any statement stating that 0.24 guntas of land was acquired in the suit item No.1 and that, the acquisition proceedings and notifications clearly show that, the land standing in the name of C.K.Devegowda was acquired in Sy.No.72/1 measuring 0.24 guntas and that, the 6th defendant is making attempt to collect evidence through court without establishing his case and that, he has not given evidence before the court and that, he has issued notice dated 20.06.2020 demanding partition and that, there was no allegation in the said notice about acquisition of land in suit schedule item No.1 and that, the land in Sy.No.72/1 measuring 0.24 guntas belonging to C.K. Devegowda was acquired under Notification No.4(1) published on 23.08.2009 and that, the 6th defendant has not filed any objection to the said notification and that, after final notification the award

was passed and that, C.K.Devegowda filed protest petition seeking enhancement of compensation and the same was registered as LAC in LAC No.3/2013 and the same was allowed in part and that, the respondents had preferred an appeal before the Hon'ble High Court of Karnataka and the same was preferred and that, the plaintiff and 6th defendant have not filed objections to the said proceedings and that, the defendants No.1, 3 and 5 have filed execution petition for recovery of award amount in Ex.No.27/202 in which the plaintiff has filed an application to implead him in the proceedings and determine his right and that, the court has rejected the application and that, on account of the notification and award passed by the 7th defendant, C.K. Devegowda has lost his property for ever and hence the application is liable to be rejected.

4. Following points do arise for consideration:-

1. Whether it is necessary to appoint court commissioner as prayed for in the application?
2. What order?

5. Having heard learned counsel for the respective parties and considered the material on record I have answered the above points as below for the following reasons;

Point No.1 : In the **Negative**,

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

REASONS

6. Point No.1:- The plaintiff has filed the suit for partition and separate possession of suit schedule properties along with mesne profits and also for share in the compensation amount which has to be awarded on account of acquisition of 0.24 guntas of land in suit

schedule item No.1 and the compensation amount awarded in respect of 0.06 guntas in Sy.No.72/1A in suit schedule item No.1.

7. When the matter was listed for arguments after conclusion of examination of both the parties, the defendant No.6 has come up with the present application to appoint A.D.L.R., Pandavapura to demarcate the suit schedule Item No.1 and submit a report as to whether the suit schedule item No.1 is in existence or acquired by the 7th defendant.

8. Learned counsel for the defendant No.6 vehemently argued that, as the defendants No.1 to 5 have denied the fact that, 0.24 guntas out of 0.32 guntas in suit schedule item No.1 was acquired by the 7th defendant by contending that, the property which stood in the name of C.K.Devegowda was acquired it is necessary to appoint a court commissioner as prayed for in the application.

9. Learned counsel for the defendants No.1 to 5 vehemently argued that, when there is documentary evidence to show that, the property which stood in the name of C.K.Devegowda was acquired for UGD system then there is no necessity to appoint court commissioner and hence the application deserves to be dismissed.

10. I have carefully heard learned counsel for the respective parties and considered the material on record.

11. According to the plaintiff, the suit schedule properties had been allotted to his father Karigowda and mother Sannamma for their maintenance with an understanding that, the same shall be equally divided between their three sons after their death and that, even though an extent of 0.24 guntas of land out of 0.32 guntas in the suit schedule item No.1 is acquired for Under Ground Drainage System the documents wrongly show that an extent of 0.24 guntas

in Sy.No.72/1 in the name of C.K.Devegowda is acquired and that, as the Under Ground Drainage work is not yet commenced the plaintiff was not sure as to whose property was acquired and that, when the revenue officers and survey officers visited the spot and informed that, the property which was acquired was 0.24 guntas out of 0.32 guntas in the suit schedule item No.1 then it was verified and came to know that the property which stood in the name of C.K.Devegowda was not all acquired and that, an extent of 0.24 guntas out of 0.32 guntas in the suit schedule item No.1 has been acquired and in spite of it he has obtained the award and hence the plaintiff is entitled to share in the compensation amount.

12. The defendants No.1 to 5 have denied that, 0.24 guntas out of 0.32 guntas in the suit schedule item No.1 was acquired. They have specifically contended that, the 7th defendant has acquired 0.24 guntas of Sy.No.72/1 which stood in the name of C.K.Devegowda and passed award in his favour.

13. The defendant No.6 has contended that, even though 0.24 guntas out of 0.32 guntas in Sy.No.72 of Sannamma was acquired by the 7th defendant, C.K.Devegowda took advantage of the fact that, the 7th defendant has not taken possession of the said property and claimed compensation as if the property which was granted to him under darkast on the western side was acquired by the 7th defendant.

14. Thus, the plaintiff and defendant No.6 have pleaded that, the 7th defendant has acquired 0.24 guntas out of 0.32 guntas in the suit schedule item No.1. It is their specific contention that, the property belonging to C.K.Devegowda is not at all acquired for Under Ground Drainage System. Per contra, the defendants No.1 to 5 have specifically contended that, the 7th defendant has

acquired the property which stood in the name of C.K.Devegowda and passed award in his favour.

15. The pleadings themselves say that, the respective parties have to prove their contentions by producing relevant documentary evidence. When it is the specific case of the plaintiff and defendant No.6 that, 0.24 guntas out of 0.32 guntas in suit schedule item No.1 was acquired by the 7th defendant the burden lies on them to establish the same by producing relevant documents. No doubt, the plaintiff has pleaded that, it is wrongly mentioned in the documents that, the property of C.K.Devegowda was acquired for UGD system. But, even then also, the plaintiff and defendant ought to establish through documentary evidence, that the documents showing acquisition of land in the name of C.K.Devegowda are wrong. Defendant No.6 has specifically contended that, 0.24 guntas of land in Sy.No.72 was granted to C.K.Devegowda on western side and the said property was not acquired by the 7th defendant for UGD purpose and that, the property acquired belongs to Sannamma. When that is the case then the defendant No.6 has to establish the same by producing relevant documents.

16. This is a suit for partition. The plaintiff has claimed that, the suit schedule properties are the joint family properties of himself and his brothers and that, all of them have got equal right of share in them. When that is the case, if the plaintiff was able to establish that the suit schedule properties are the joint family properties of himself and his brothers then all of them would get equal right of share in them. In such an event, all of them would get equal right of share in the compensation also. Further, when the plaintiff and defendant No.6 have pleaded that, 0.24 guntas out

of 0.32 guntas of suit schedule property has been acquired by the 7th defendant then the existence of the said property or otherwise would be come irrelevant in view of acquisition proceedings. The parties can prove the acquisition proceedings as well as the property which was actually acquired by the 7th defendant by producing relevant documents. Under these circumstances, appointment of court commissioner as prayed for in the application is not necessary. **Hence I answer Point No.1 in the Negative.**

17. POINT No.2:- Having answered Point No.1 in the Negative, I proceed to pass the following :-

ORDER

I.A.No.XIII filed under Order XXVI Rule 9 R/w
Section 151 of CPC is dismissed.

(Dictated to the Stenographer on computer directly, then corrected and pronounced by me in the open Court on 20.02.2026)

(BABU N.)
I Addl. Senior Civil Judge & JMFC,
Pandavapura.

(Order pronounced in the open Court
vide separate Order)

I.A.No.XIII filed under Order XXVI
Rule 9 R/w Section 151 of CPC is
dismissed.

For arguments.

Call on : 23.02.2026

I Addl. Senior Civil Judge & JMFC,
Dt : 20/02/2026 Pandavapura.