

KAMS410003512024



**IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR**

PRESENT

**Sri. Chandan S, B.Com., LL.B
Prl. Civil Judge & JMFC, Krishnarajanagara.**

DATED 08TH DAY OF OCTOBER 2025

O.S./93/2024

Plaintiff : Murthy

-V/s-

Defendants : Ramachandrashetty and others

I.A. 9

Applicant : Murthy

--- Plaintiff

-V/s-

Opponents : Ramachandrashetty and others

--- Defendants

ORDERS ON I.A.NO.9 U/O 26 R-54 OF C.P.C.

The instant application has been presented before this Court by the applicant/plaintiff herein, seeking the appointment of a Court Commissioner. The applicant has requested that a competent, experienced, and skilled commissioner be appointed to visit the spot and examine the property in question, and ascertain whether any pathway, cart-track, or road exists towards eastern

and northern of the said property, and thereafter submit a report to this Court.

2. It is stated in the affidavit filed along with the application that the defendants have already been impleaded in the present suit instituted by the plaintiff for an injunction against them. The evidence on both sides has been completed. The plaintiff asserts that he has been in absolute, uninterrupted, peaceful, and continuous possession and enjoyment of the plaintiff's property, carrying out agricultural activities therein without interference until recently.

3. However, it is alleged that the defendants have now started causing obstruction, disturbance, and undue interference in the plaintiff's peaceful possession and agricultural operations. In particular, the defendants are said to have denied the plaintiff access to the existing pathway, cart-track, and road surrounding the property, thereby causing serious difficulty for the plaintiff in reaching and utilizing the property for agricultural purposes.

4. In these circumstances, the appointment of a commissioner has become necessary to inspect the spot and submit a report regarding the existence of any pathway, cart-track, or road abutting, adjoining and connecting to the suit property towards Easter and northern side. Accordingly, the applicant prays that this court to allow the present application.

5. The instant application filed by the plaintiff is strongly contested and opposed by the opponents/defendants. At the outset, the defendants submit that the application is not maintainable either in law or on facts and is liable to be dismissed.

6. The grounds of objection submitted by the defendants are as follows, the present suit is one for injunction and not for partition. No division or allotment of shares has taken place between the plaintiff and the defendants. Therefore, the question of appointing a commissioner to ascertain pathways or boundaries does not arise. The plaintiff has not produced or placed on record any documentary evidence to show the existence of the alleged pathway, cart-track, or road towards the eastern or northern side of the suit schedule property. Mere pleadings without documentary substantiation cannot form the basis for appointing a commissioner. The defendants categorically deny the existence of any pathway, road, or cart-track as alleged by the plaintiff. In particular they have taken specific stands that, they have already fenced and enclosed their property with proper fencing and hedging since the year 2010. Hence, the contention of the plaintiff is false, baseless, and imaginary.

7. The present application has been filed only to create evidence and to fill up the lacuna in the plaintiff's case. The duty of adducing evidence lies with the parties themselves. A commissioner cannot be appointed to collect materials on behalf of

a party. Contrary to the averments of the plaintiff, the evidence in the matter is not yet concluded. Hence, the application is premature, unsustainable, and filed only to delay the proceedings. In view of the above submissions, the defendants humbly pray this court to dismiss the application filed by the plaintiff as being devoid of merits, untenable in law, and not maintainable.

8. Heard the learned counsel appearing for the petitioner/applicant, as well as the learned counsel appearing for the defendant-opponent, who have addressed their arguments.

9. The following points arise for this court's consideration.

1) Whether applicant has made out sufficient grounds for allowing the present application?

2) What Order?

10. This court findings on the above points for consideration are as under:

Point No.1: In the Negative

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

REASONS

11. POINT NO.1:

On perusal of the pleadings, documents, and materials placed before this Court, it is seen that the applicant has sought for appointment of a Commissioner, specifically an Advocate-Commissioner having expertise in demarcation, to visit the suit

schedule property and to ascertain whether any pathway, wynd, cart track, or road exists abutting and connecting the property on its eastern and northern sides, and to submit a report before this Court. The case of the plaintiff is that such a pathway exists and necessary for him to access and carry out agricultural activities, whereas the defendant has specifically denied the existence of such pathway in his statement of objections.

12. It is relevant to note that though the parties have already filed their pleadings, no evidence has been adduced before this Court in proof of the alleged pathway. Except for the pleadings and the affidavit filed, no material evidence has been placed to substantiate the claim. The present application has been filed when the matter was already posted for hearing on application No.1 which was infused and incorporated before this court invoking the provisions contemplated U/o 39 R-1 and 2 of C.P.C. seeking the assistance of a Commissioner.

13. It is a well-settled principle of law, as it was held in several precedents, that a Court cannot permit appointment of a Commissioner merely for the purpose of collecting evidence on behalf of either party. The burden lies upon the party asserting the existence of a pathway to prove the same by adducing proper evidence. Appointment of a Commissioner can be considered only if, after the parties adduce their evidence, if the Court finds it necessary for clarification or elucidation of certain doubts regarding the physical features and presence of the property.

14. In the present case, no such evidence is placed before this Court. The plaintiff has asserted in his pleadings that a pathway exists, but has not produced any material to substantiate it. Hence, the application appears to be filed only to collect evidence, which is impermissible in law. At this nascent, premature, limine, inception and callow stage, the appointment of a Commissioner is not required. Accordingly, this Court is of the considered view that the application is premature, devoid of merits, and not maintainable.

15. However, it is settled proposition and also position of law that, the Commissioner of the Court cannot be appointed to collect the evidence in support of a particular claim. Further, it is also the dictum of the Hon'ble High Court of Karnataka that, after completion of the evidence of both sides if it is found that, there is any ambiguities, cloud or dispute in the evidence of the parties already laid and placed before this court, the court may proceed for appointing a Commissioner only for the purpose of clarification of such ambiguities, disputes, disparity and obfuscations. Further, the court may seek the assistance of Commissioner to clarify the ambiguities which has been crept and found in the evidence of the parties.

16. As per the said dictum and verdicts, the assistance of the Commissioner is prerequisite and essential in the case having any clarification or doubts which arose in the materials and evidence

which are already adduced by the respective parties in the suit. But, the said Commissioner cannot be appointed for the purpose of collecting the materials and evidence. Rather, it is only for clearing the doubts in the evidence. In the instant suit as could be seen from the rival pleadings, it is the dispute regarding the pathway, cart track, conservancy and road. The applicant/plaintiff has no way pleaded, explained, disclosed and exhibited the importance, necessity, need and the presence of the commissioner so as to visit the spot and to furnish his report.

17. Except for rendering the evidence, the application is filed to ascertain the demarcation, identification, notifying and marking out the pathway and road. At this scenario, instance, juncture and movement this court is of the considered view, expression and opinion that, since the dispute is mainly regarding the existence, verification and inspection of the cart track, path, wynd and road merely, only, pite, nobbut and simply for the relief of ascertaining the road and enabling the court regarding the existence of the said alleged way and road, the clouds over the existence of the road being the primary motive and the object is to prove and also substantiate the said existence, subsistence and prevalence of the said alleged road, it is for the plaintiff alone in order to ratify, prove and authenticate the said view stand and expression by leading and presenting cogent, cognitive, primal, vivid and substantial piece of evidence.

18. Therefore, the applicant asking and praying for appointing, entrusting, deputing, designating and delegating the Commissioner to visit, examine and verify the spot of the schedule property cannot achieve any purpose and also it cannot achieve the settled position, principle and tenet of law. Hence, the application is nascent, callow, limine, bud and it is very preliminary and premature stage to entrust the commissioner and to obtain their report. Hence, the appointment of the Commissioner does not called for, warranted and required. Hence, the application is liable to be dismissed.

19. POINT NO.2:

In view of the above discussion and reasons mentioned therein this court proceeds to pass the following:

ORDER

The application filed by applicant/plaintiff
U/o 26 R-54 of C.P.C. is hereby dismissed.

For hearing on IA No.1 which has been
available before this court under the provisions of
order 39 R-1 and 2 of C.P.C.

Call on. 28.10.2025.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in the Open Court on this the 08th day of October 2025]

(Chandan.S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.