

07/03/2026

Plaintiff by: Shri.CNP Adv.

Defendant by: Shri.PD Adv.

**ORDERS ON IA.NO.3 FILED BY THE PLAINTIFF UNDER
ORDER 26 RULE 9 R/W SEC.151 OF CPC.**

1. Plaintiff has filed the present suit for the relief of perpetual injunction as against the defendant.

2. When the case was at the stage of cross-examination of Pw-1, the plaintiff has filed the instant application praying to appoint a court commissioner so as to visit, inspect and measure the suit property and property of the defendant and to fix the boundary stone to the suit property and property of the defendant.

3. In the affidavit accompanying the application it is averred that the plaintiff has filed the present suit for the relief of perpetual injunction. It is averred that the plaintiff is a owner of the suit property. It is averred that there is a boundary dispute in between the plaintiff and defendant due to which, the defendant is causing illegal interference to the peaceful possession of the plaintiff over the suit property. It is averred that in order to put an end to the dispute in between the plaintiff and defendant, it is necessary to appoint the Taluka Surveyor to measure the suit property and property of the defendant and thereby to fix the boundary stone in respect of both the properties. It is averred that if the court commissioner is not appointed as sought for in the instant application, then the rights of the plaintiff over the suit property

will be adversely effected, in which even the plaintiff will be put to untold hardship which cannot be compensated in terms of money. It is further averred that if the court commissioner is not appointed then it will also lead to multiplicity of litigation. It is averred that if the application is allowed and thereby if the court commissioner is appointed, no harm and no loss will be caused to the defendant. Therefore, for fare and effective adjudication of the above case, it is necessary to appoint the court commissioner so as to note and report about the points referred in the application. Hence, on the above grounds, the plaintiff has prayed to allow the application and to appoint the court commissioner.

4. The application was resisted by the defendant by filing his objection. The defendant has contended that the present application filed by the plaintiff is not maintainable under the law. The reasons assigned in the accompanying affidavit are vague and baseless. No valid reasons are forthcoming from the plaintiff to allow the application. The plaintiff has sought for appointment of court commissioner. But the trial in this case is not yet commenced. By appointing court commissioner the plaintiff is intending to gather the evidence and the same is not permissible under the law. The present application being filed before the commencement of trial, the same is premature. It is contended that appointing the court commissioner and calling for his report on the points referred in the instant application is not called for, for the purpose of fair and effective adjudication of the above case. Hence, with the above contentions, the defendant has sought for dismissal of the application by imposing costs.

5. Heard arguments from both the side. Perused the records. After going through the application along with affidavit, objection statement and the relevant document placed on record, the following points arises for my consideration:

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

Point No.2: What order?

6. My answers to the above points are as hereunder:

Point No.1 : In the Negative.

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

REASONS

7. POINT NO.1: Plaintiff has filed the present suit for the relief of perpetual injunction as against the defendant.

8. By filing the instant application, the plaintiff has prayed to appoint the court commissioner so as to visit, inspect and measure the suit property and property of the defendant and to fix the boundary stones in between the suit property and the property of the defendant. The plaintiff has filed this suit alleging that the defendant has caused illegal interference to his peaceful possession over the suit property. Based on rival contentions, this court has framed the Issues. To grant decree for permanent injunction, the plaintiff must prove his possession over the suit property. Fixing of boundary stones is not the function of the civil courts. The records reveals that the trial of this case is not yet

concluded. It is only after the conclusion of the evidence, the court can decide whether the evidence placed before it are sufficient or not to decide the matter in dispute and whether there is a need for appointment of court commissioner. Hence, in view of the foregoing discussions, this court is not inclined allow the application. I do not find any merits in the application. The present application being devoid of merits, the same deserves to be dismissed. **Accordingly, point No.1 is answered in the Negative.**

9. POINT NO.2: In view of my foregoing findings and discussions on Point No.1, I proceed to pass the following:

ORDER

IA No.3 filed by the plaintiff U/o 26 rule 9
R/w Sec.151 of CPC is hereby dismissed.

No order as to costs.

Case is restored to its original stage.

For cross of Pw.1

Call on: 13/03/2026.

I ACJ & JMFC, K.R.Nagar.