

KAMS410032182021



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

PRESENT

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

DATED 01ST DAY OF DECEMBER 2025

O.S./373/2021

Plaintiff : J.Somashekhara Shetty

-V/s-

Defendant : N.Gowdappa

I.A.5

Applicant : J.Somashekhara Shetty

--- Plaintiff

-V/s-

Opponent : N.Gowdappa

--- Defendant

Provision under which the applications are filed	U/o 26 R-9 of C.P.C.
Relief sought for	To appoint the ADLR
The date on which the applications are filed	16.12.2024
Number of the application	5
Date on which the objections are filed by the different opponents	16.04.2025

Date on which the order is passed	01.12.2025
-----------------------------------	------------

ORDERS ON I.A. NO.5 U/O 26 R-9 R/W SEC.151 OF C.P.C.

The present application is filed by the plaintiff under Order 26 Rule 9 CPC seeking appointment of a Court Commissioner to visit the schedule property, to measure, examine, demarcate and ascertain whether the defendant has dug a trench or encroached upon the plaintiff's property and to submit a report to this Court.

2. The plaintiff contends that, he has filed the suit seeking declaration of title and permanent injunction. According to the plaintiff, during the pendency of the suit, the defendant is attempting to dig and put up a compound wall by deploying a JCB machine, thereby encroaching into the suit property. The plaintiff states that, if the defendant is permitted to proceed with the construction, he would suffer great hardship and irreparable loss. The plaintiff claims that he is a retired school teacher and the owner in possession of the suit property, and that appointment of a Commissioner is necessary to bring out the "true facts" and the "exact portion of encroachment" before the Court.

3. The plaintiff asserts that, after dismissal of his earlier injunction application and confirmation of the said dismissal in appeal, the defendant has started taking undue advantage and is attempting to raise a compound wall in haste and hurriedly. He

therefore prays for appointment of a Commissioner to ascertain the nature and extent of alleged encroachment.

4. The defendant has filed detailed objections opposing the application. The defendant contends that, the application is false, frivolous, and unsustainable in law. The defendant submits that, the plaintiff is falsely claiming ownership over property which does not belong to him and is nowhere situated within the precincts of the temple property. The defendant asserts that, the Marikamba Temple is more than 70 years old and the property stands in the name of the Temple Trust in municipal records, including a 13-foot conservancy lane towards the eastern side.

5. The defendant further contends that, the plaintiff has furnished incorrect and fabricated boundaries, and the suit itself is filed to create false claims against temple property. The defendant submits that, appointment of a Commissioner at this stage would amount to collection of evidence for the plaintiff, which is expressly impermissible. According to the defendant, parties must first lead evidence, and only thereafter can the Court consider whether local investigation is required. Hence, the present application deserves to be dismissed.

6. Heard the rival litigants under the application and also verified the documents produced before this court.

7. 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?

8. 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

9. POINT NO.1:

It is settled law that, appointment of a Commissioner under Order 26 Rule 9 CPC cannot be made for the purpose of collecting evidence for either party, nor to fill up lacuna in their case. The Commissioner is to be appointed only when the Court requires clarification of existing evidence, or when local investigation becomes necessary for proper adjudication after parties place material before the Court.

10. In the present case, both title and boundaries of the suit property are seriously disputed by the defendant. The plaintiff has not yet led any evidence to establish his right, title, or possession over the schedule property. Without evidence on record, directing a Commissioner to measure or demarcate property would clearly amount to collecting evidence in support of the plaintiff's claim, which is impermissible. The plaintiff's claim that, the defendant is

digging or constructing a compound wall remains unsupported by any independent documentary evidence. Mere allegation of interference cannot be a ground for appointment of a Commissioner when the very identity and location of the plaintiff's property is under dispute.

11. It is further noticed that, the plaintiff's earlier application for injunction was dismissed by this Court and the dismissal was confirmed by the Hon'ble appellate Court. There is no material to show any substantial change of circumstances warranting appointment of a Commissioner. The plaintiff's request is essentially an attempt to obtain, through the Commissioner, what he failed to establish through his own documents and pleadings. A Commissioner cannot be used to prove possession or ownership on behalf of the plaintiff. Therefore, at this stage, when no evidence has yet been recorded, appointment of a Commissioner is neither necessary nor legally permissible. Hence, the point No.1 is answered in the **negative** and the application is liable to be **dismissed**.

12. 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-9 R/w Sec. 151 of C.P.C. for appointment

of a Court Commissioner is hereby dismissed as
being devoid of merits.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in
the Open Court on this the 01st day of December 2025]

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