

KAMS500002682022



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : **Sri. Kamalaksha D., B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 3rd day of June 2026

R.A./12/2022

Appellant : Mahadevappa,
aged about 70 years,
S/o late Gurusiddappa,
Muddahalli Village,
Kasaba Hobli,
Nanjangud Taluk.

-V/s-

Respondent : Nanjundaswamy,
aged about 56 years,
S/o late Shivappa,
Muddahalli Village,
Kasaba Hobli,
Nanjangud Taluk.

I.A. II

Applicant : Mahadevappa

..appellant
(By Sri. C.L.B., Adv.)

-V/s-

Opponent : Nanjundaswamy

... respondent
(By Sri. N.S., Adv.)

**ORDER ON I.A.II FILED UNDER ORDER
26 RULE 9 R/W SECTION 151 OF CPC**

The appellant filed this application for appointment of court commissioner to measure the property of vacant site including the plots formed in the schedule property and the property mentioned by the defendant in the written statement and submit report.

2. In the affidavit it is sworn that, the suit of O.S.70/2011 was filed for the relief of permanent injunction. The said suit came to be dismissed for the reason that the plaintiff has not given proper boundaries, thereby he failed to prove his possession over the schedule property. However, the measurement of the suit schedule property, property mentioned by the defendant in the written statement and property of Sy.No.1 situates in

between the schedule property mentioned in the plaint and written statement are to be measured by the commissioner, thereby the report may give help to the parties as well as court for proper and effective adjudication of dispute forever. The respondent/defendant already sold the property mentioned in the written statement, but he has mentioned the false boundaries. Sites were formed in the acquired property long back and houses were formed. The documents are available in the Public Department regarding the acquisition of the property and the said documents also providing necessary information like the year in which the acquisition was made, details of the formation of the sites etc. The measurement of the property by the commissioner is very much required as per the documents available in the public office. So, report of the commissioner may helpful to the court to decide the dispute between the parties, otherwise the dispute will remain as it is. Hence, the plaintiff prays to appoint the court commissioner.

3. Per contra, the respondent/ defendant filed objections stating that the application is not maintainable at the outset, because no court commissioner be appointed in the permanent injunction suit, because there is no provision available in the C.P.C. It is further mentioned that, though the plaintiff has taken contention that the property of Sy.No.1 was acquired long back, but the property of Sy.No.1 and sites formed in the said survey number belonging to one Nanjundaswamy S/o Muddalli Shivanna S/o Madaiah. The property of Sy.No.2 measures 1 acre was acquired by the Special Land Acquisition Officer as per the order No.LAQ.HSL 79/1978-79 dated 15.03.1979. Necessary documents are already framed in this regard and the acquired property was then converted into sites. The Trial Court has carefully perused the documents before dismissal of the suit of the plaintiff. However, no document is available in any revenue office regarding the acquisition of Sy.No.1. It is further stated that, the plaintiff has taken contention that originally the property of Sy.No.1 belonging to Kullappa, because the

said property was granted in his favour in the year 1972 and the present plaintiff claimed that he purchased the property from Kullappa through unregistered sale deed after measurement of Sy.No.1 of property. So, re-measurement of the property does not arise and does not allowed as per law. Already the plaintiff has taken compensation regarding acquisition of the property. So, the plaintiff cannot claim his possession over the schedule property. The Trial Court already perused Exs.P.12 to 14 pertaining to the property of Sy.No.2/11 measures 0.31 $\frac{1}{4}$ guntas and the plaintiff has already furnished necessary documents before the Trial Court and the said documents were properly evaluated. The plaintiff cannot take the assistance of the commissioner to furnish additional documents to prove his possession. Hence, the respondent prays to reject the application.

4. Heard. Perused pleadings and materials placed on record. The points that arise for consideration are:

1. Whether the appellant has shown relevant reasons to appoint the court commissioner by considering I.A.II?

2. What order ?

5. The above points are answered as follows :-

Point No.1 : In the negative

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

REASONS

6. **Point No.1:-** As mentioned aforesaid, the suit was for the relief of permanent injunction and the said suit came to be dismissed by the Trial Court on 24.01.2022. The contention of the appellant that the appointment of court commissioner to measure the suit schedule property and the property mentioned by the defendant in the written statement is very much cardinal task to conclude the matter in effective mode and the said report may assist the court for proper adjudication and end the dispute between the parties forever. At the outset, I would like to say that there is no prevention and rider in C.P.C. to appoint court commissioner in the injunction simpliciter. However, the

basic principle of law in injunction suit that, the plaintiff must prove his possession over the suit schedule property as on the date of filing of suit and interference of his counter part. In the present matter shows that the Trial Court has carefully perused the documents of either side before dismissal of the suit. The Trial Court has considered the documents of the parties and has come to conclusion that the possession of the plaintiff over the schedule property is not proved. However, it is made clear that the appellant may satisfy this court regarding re-consideration of the evidence of the parties and also chance to show before this court that where the Trial Court has failed to consider the documents to prove the possession. In conclusion, I would like to say that in the present matter the documents are very much available and those documents are much suffice to dispose the matter effectively and appointment of the court commissioner is not required. Moreover, the appellant has not shown the reason for appointment of the court commissioner at this

juncture. Therefore, **point No.1** is answered **in the negative.**

7. **Point No.2:-** In view of the findings on the above point, this Court proceeds to pass the following:

ORDER

I.A.II filed by the appellant under Order
26 Rule 9 r/w Section 151 of C.P.C. is rejected.
No order as to cost.

(Dictated to the stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 3rd day of June 2026).

(Kamalaksha D.)
Senior Civil Judge & J.M.F.C.,
Nanjangud.