

**ORDERS ON APPLICATION UNDER ORDER 26 RULE 9 OF
CPC**

1. The advocate for defendant No.1 has filed application praying this court to appoint court commissioner for local inspection and for measurement of suit property and that of defendants.

2. In the affidavit to the accompany application, it is submitted that there is no right of way to the plaintiff in her land and therefore there is a need for local inspection to find out that there is an alternate road available for plaintiff with the requirement for measurement of the properties of both the parties and hence prays to allow the application.

3. The advocate for plaintiff has filed objection contending that this application is filed to prolong the proceedings and there is no pleading in the written statement that there is an alternative for the plaintiff to reach the schedule 'A' property and hence has prayed to dismiss the application contending that the schedule 'A' property is landlocked.

4. Heard advocate for plaintiff and the defendants and the following points arise for consideration.

POINTS

1. Whether the defendant No.1 shows the requirement of appointment of court

commissioner?

2. What order?

5. This Court answers the above points are as under:

Point No.1 : Partly In the Affirmative

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

REASONS

6. **Point No.1:-** This is a suit for declaration, to declare that the plaintiffs are having easementary right over schedule 'B' property and declare there exists Government cart road and Sy.No.309 and 299 to reach her property and to restrain the defendants from interfering in the schedule 'B' property. Perused the pleadings, the plaintiffs are claiming easementary right by prescription over schedule 'B' property however the defendants being the owners of property bearing Sy.No.299 have contended of though such cart road in existence for the plaintiffs to reach schedule 'A' property and the alternative way used by the plaintiffs was in Sy.No.302 situated on the western side of schedule 'A' land by using KRBC channel bund abutting the channel on the western side of schedule 'A' property.

7. In the application and also submissions made by the advocate for defendant No.1, has not made out any

ground for measurement of the properties of both the parties and also this court finds no reason for such measurement. This suit being for easementary right the proof of any alternative road as contended by defendant No.1 is to be seen. Local inspection for the purpose of identifying such alternative way, as contended by the defendants in the written statement of the plaintiffs using the KRBC channel bund and the property in Sy.No.302 for ingress and egress to reach schedule 'A' property is to be noted. By appointing the court commissioner for local inspection as to whether there is existence of any such cart road in the schedule 'B' property or of any alternative way of KRBC bund that was used by the plaintiffs could be ascertained by appointment of court commissioner, which is in subject matter dispute. By appointing the court commissioner for local inspection, it would not prejudice either of the parties as it would facilitate in disposing the dispute between the parties. Hence it is made clear that the court commissioner has contended to appoint surveyor is not required as there is no requirement for measurement of suit property and the defendants' property, as no ground is made out in the said application by the defendant No.1 and further it is made clear that the court commissioner is hereby appointed to see whether there is any alternate road

as contended by the defendants in written statement and also of there existence of any cart road in schedule 'B' property. For this the appointment of an advocate is sufficient and hence for the said reasons, this Court answers the Point No.1 Partly In the Affirmative.

8. **Point No.2**:- In view of my findings on Point No.1, this Court proceeds to pass the following:

ORDER

The application filed under Order 26 Rule 9 of C.P.C. is hereby partly allowed.

The advocate, as per the instructions of both the advocates on record would be considered as court commissioner.

The Commissioner Fee is fixed at Rs.1,000/-.

For memo of instructions, to the limited extent, as discussed in the application would be filed by the advocates on record.

Call on 14.02.2022

**I Addl., Civil Judge & JMFC
Nanjangud**