

KAMS510002232018



**In the court of the I Addl. Civil Judge & JMFC.,
at Nanjangud**

**Present: Smt.Saritha Kumari.A.M, B.A., LL.B.,
I Addl. Civil Judge & J.M.F.C.,Nanjangud**

Dated this the 11th day of March- 2026

O.S.No.37/2018

**Plaintiff : Doreswamappa,
(By Sri.C P M-Advocate)**

- Vs -

**Defendant : Basavarajappa & others
(By Sri.S B P, Adv.)**

I.A. No.IV

**Applicant : Doreswamappa
-V/s-**

Opponents : Basavarajappa & others

ORDER ON I.A.NO.IV

The plaintiff has filed this application filed U/Sec 26 rule 9 read with section 151 of CPC praying to appoint Civil Engineer as Court commissioner to measure the suit schedule property in O.S.No.442/2017 and also of O.S.No.37/2018 and to prepare sketch and submit it to court.

2. In the annexed affidavit, the plaintiff contends that, he has filed this suit for the relief of declaration and permanent injunction of the suit schedule property. The 2nd defendant of this suit has filed a suit for permanent injunction against the

plaintiff and his uncle in O.S.No.442/2017 and both the suits have been clubbed as per the application of the plaintiff dated:30.07.2022.

3. He further contends that, the defendant by colluding with revenue officials has concocted the documents. The defendant has hid the facts of the suit schedule property. The boundaries of the suit schedule property in O.S.No.442/2017 are wrongly mentioned.

4. He further submits that, his grandfather K. Shivabasappa acquired the land measuring 2 acres and 38 guntas in Survey No. 27/1 of Hullahalli Hobli, Nanjangud Taluk, out of which 30 yards in the east-west direction and 15 yards in the south-north direction (0.03.08 guntas) in the south-north direction from Chennappa and Guruswamy, sons of Chennanjappa Lingappa of Mallahalli village, through a registered deed dated 05/07/1965 and was in possession of the land. In 1968, since the defendant's father was illegally in possession of the said property, his grandfather K. Shivabasappa had filed a suit in the Nanjangud Municipal Court, O.S.132/1968, seeking possession, against Chennappa, who had purchased it, and against his brother Guruswamy and the defendant's father Muddubasappa @ Gundappa, and Siddappa and his brother Chinnaswamy and the said suit was settled through compromise on 03/09/1969 and a decree was accordingly passed. According to the said compromise petition, the area of Sy.No.27/1 belonging to his grandfather K. Shivabasappa in the village of Mallahalli, from the well to the west, from the well to the north, 17 yards to the east-west, and 30 yards to the north from the well to the south-south, belongs to his grandfather K. Shivabasappa and his grandfather has a claim to acquire the said property. Then his grandfather filed a suit against the above-mentioned people in the said court vide

Ex.No.: 110/1980 to acquire the property as a result of a dispute and his grandfather has acquired the said property through the court amin as per the order of the court. The father of the defendant Muddubasappa@Gundappa is a party to the said suit and has also signed the compromise petition.

5. He further submits that, after the death of K. Shivabasappa, his sons Mahadevappa and M.S. Puttaswamappa divided the said property verbally in 1993-94. M.S. Puttaswamappa was allotted 0.01.12 gunte (East-West 15 yards, North-South: 15 yards) in Survey No. 27/1B-P1 of the claim property. The gunte land of the property that came into the possession of my uncle Puttaswamappa (East-West 15 yards, North-Mahadevappa's share has also come to an end and the plaintiffs are in possession of the property that has come to plaintiff's share by making an account and not making an account. After his father's death, plaintiff and his son, are in possession of the schedule property.

6. He further submits that, Since there is a dispute between the plaintiff and the defendants regarding the area and the check bonds, and the defendant's father purchased a land of an area registered in Survey No. 27/1, East-West=15 yards, North-South=30 yards, dated 15/06/1965, through a purchase deed, then the defendant, in collusion with the Panchayat officers, has made an account of the said land illegally. The court's representative is very necessary to measure the area as per the purchase deed and it is necessary to settle the said dispute. Therefore, he has filed this application for the appointment of a Civil Engineer as the court's representative to measure the schedules of the above two cases as per the area mentioned in the purchase documents and prepare the sketch

and submit a report to this Court.

7. On the other hand the defendants have objections and contended that, the defendant no.2 is the lawful owner in possession of the suit schedule mentioned in the said OS No.442/2017 as stated in the said suit. Hence the defendant no.2 has been in lawful possession and enjoyment of the said suit schedule property mentioned in the said OS NO.442/2017 till now and even now as per law as stated in the said suit filed by him against the plaintiff of the above suit. Hence on this ground also the application filed by the applicant/plaintiff is not maintainable as per law. The all other averments made by the applicant/plaintiff in their affidavit which were not specifically traversed herein are all totally strictly denied by this defendant no.2 as false and as not true. Hence the applicant/plaintiff is not entitled for appoint a civil engineer as a court commissioner.

8. He further contends that, the applicant/plaintiff has sworned to the false affidavit for appoint civil engineer as a court commissioner by suppressed the real facts in order to give trouble and mental torture to the defendant no.2 and also to the others defendants which is not permissible under law with intent to harass the defendant no.2 who is in actual possession and enjoyment of the suit schedule property of the said OS NO.442/2017 as stated in the said suit as per law. He further submits that he the suit schedule property mentioned in the said OS NO.442/2017 is originally a land bearing sy, no.27/1 total measuring 2 acre 38 guntas out of which towards western side a vacant site measuring east-west 15 gaja and north-south 30 gaja was purchased by the father of the defendant no.2 i.e., Muddubasappa s/o late Lingappa from one Channanjappa s/o late Siddappa and his brother Chinnaswamappa s/o late Siddappa of Mallahalli village, Hullahalli hobli, Nanjangud Taluk through a registered sale deed dated 15-06-1965 for a

valuable consideration. Then the katha of said site was changed to the name of father of the defendant no.2 on the basis of said sale deed. Ever since the father of the defendant no.2 had been in lawfull possession and enjoyment of the said property as per said sale deed along with his children uninterruptedly without interfering from anybodies, by paying kandayam to the concerned authority from time to time. He further submits that during life time of the father of the defendant no.2, in the said suit schedule property bearing sy.no.27/1 total measuring 2 acre 38 guntas out of which towards western side a vacant site measuring east-west 15 gaja, north-south 30 gaja out of which a site bearing junjer number 367 property number 367 measuring east-west 25 feet, north-south 35% feet in which a five ankanam residential house and its backside another vacant site bearing junjer number 367 property number 367/1 measuring east-west 20 feet towards southern side and east-west 12 feet towards northern side both are having common boundary ie East by Galli, west by vacant site belongs to late Shivabasappa and his brother now M.S.Puttaswamappa and the plaintiff and north by House of Basavarajappa ie defendant no.1 and south by Road came to the share of defendant no.2 through their family oral partition about twenty two years back and remaining property of the said survey number are came to the share of brothers of defendant no.2. Then the defendant no.2 has changed the katha of the above said properties which comes within the jurisdiction of Hallare Grama panchayath into his name in said concerned Hallare Grama panchayath office as per said family partition.

9. He further submits that ever since from the said partition the defendant no.2 has been in lawful possession and enjoyment of the said properties towards eastern side of the suit schedule property uninterruptedly without interfering from any

bodies from time to time by paying kandayam, tax to the concerned Hallare Grama panchayath, Nanjangud taluk up to date. Hence the defendant no. 2 is the absolute owner in possession and enjoining the above said properties towards eastern side of the suit schedule property and he has been in lawful possession and enjoyment of the said properties since from twenty two years back till now and even now. He further submits that the plaintiff and his paternal uncle Puttaswamappa have no any manner of right, title, interest whatsoever over the above said properties which is towards eastern side of suit schedule property is belonged to the defendant no. 2 and his brothers But the plaintiff and his paternal uncle Puttaswamappa about 7 months back on 11-09-2017 along with anti social elements have illegally trying to interfere with the defendant no.2's peaceful possession and enjoyment of the above said properties towards eastern side of the suit property and also trying to encroach on western side of the defendant no.2's properties, for put up stone pillo with barbed fence ie kallu kamba.

10. He further submits that he and his brothers were advised to the plaintiff and his paternal uncle Puttaswamappa property as not to interfere with his peace full possession and enjoyment of the said properties towards eastern side of the suit schedule property and also the elders and well wishers of both the families have advised and conveyed the panchayath. In spite of the said advise the plaintiff and his uncle did not heed to their advises, ultimately the defendant no.2 approached the jurisdiction police station and given a complaint against the plaintiff and his said uncle on 11-09-2017 to stop to illegal interference of the plaintiff and his uncle then the police instead of take suitable action against the plaintiff and his said uncle, have directed to the defendant no. 2 by given an endorsement ie

NCR on 11-09-2017 by saying orally to approach civil court as the matter is civil in nature. Then the defendant no. 2 without any alternative way has filed the original suit on 20-09-2017 against the plaintiff Doreswamappa and his paternal uncle Puttaswamappa before this Hon'ble court bearing O.S.NO. 442/2017 by seeking permanent injunction in respect of the above said properties belonged to the defendant no. 2 towards eastern side of the suit schedule property. The defendant no.2 had also moved an interim application in the said suit by sought interim order against the plaintiff and his uncle in respect of said properties belonged to the defendant no. 2. Then the court has passed Ad-interim ex-parte temporary injunction order on 21-09-2017 against the plaintiff/Applicant and his uncle in respect of the defendant no.2's properties which is towards eastern side of the suit schedule property. The defendant no. 2 herewith have produced the certified copies of the order sheet, plaint copy of said O.S.NO.442/2017 and said NCR issued by the concerned police dated 11-09-2017 for kind perusal of the court. The said Temporary injunction order was in force till 28-10-2017 and the said order has been in force and still in force even now. The plaintiff and his uncle had also received the notices about the said order passed in the said suit filed against them.

11. He further submits that in-spite of knowledge of the Temporary injunction order passed by this court against the plaintiff i.e., Doreswamappa and his uncle Puttaswamappa as not to interfere with the peace full possession and enjoyment of the defendant no.2's properties which is towards eastern side of the suit schedule property, the plaintiff Doreswamappa and his uncle along with their family members entered upon the defendant no.2's properties and disobeyed the order of the Temporary injunction deliberately and willfully with the full

knowledge of the T.I. order and have put stone pole with barbed fence night and night towards western side of the defendant no.2's properties as south-north which is towards eastern side of the suit schedule property. Due to the plaintiff and his uncle have put a barbed fence with stone pole towards western side of the defendant no.2's properties which is towards eastern side of the suit schedule property, it caused very trouble in all aspects to the defendant no.2 to ingress and out-gress to their cattle shed along with their cattle's daily for tie them and take them. The plaintiff and his uncle are not only disobeyed the court order willfully with full knowledge of T.I. Order and also caused damage to defendant no.2's properties. He has filed a complaint to the station House officer of Jurisdictional Hullahalli police station on 29-09-2017 against the plaintiff and his family members for violation of injunction orders passed by the court then the concerned police have received the said complaint, inspite of it they have not taken any action against the them for violation of court order by saying one or other reason, but after several days left they have given an endorsement dated 29-09-2017 to the defendant no.2. The plaintiff and his family members are very power full persons and they have no respect for the court orders As a consequences, the defendant no.2 who has been in lawful possession and enjoyment of the said properties has incurred heavy loss and is still suffering in all aspects. The plaintiff and his uncle are not in possession of the said properties belonged to the defendant no.2, which is towards eastern side of the suit property at any point of time till now and even now and they have no right over the said properties.

12. He further submits that as stated above there is will full disobedience on the part of the plaintiff and his uncle to the

Temporary Injunction order of this court and unless they are dealt with as per law, they will continue to harass the defendant no.2 and the plaintiff has taken law into their hands and have done illegal acts. Hence without any alternative way the defendant no. 2 has filed a Mis.petition in 2017 against the plaintiff/applicant and his uncle for violation of court order before this court and the said case is still pending. Such being the case plaintiff has suppressed the real facts and even if he has not any right title, interest or ownership over the properties of the defendant no.2 which is towards eastern side of the suit property ie western side of the defendant no.2's properties, the plaintiff is trying to encroach 12 feet as south-north of western side of the defendant no.2's properties, by put up barbed fence with stone pole by violating the court order by the plaintiff and his uncle. He has filed this false and frivolous suit against the defendants by suppress the real facts and also the plaintiff has filed this false suit for declaration by including the defendant no.2's properties as stated above even after the defendant no.2 has already been obtained the interim order against the plaintiff and his uncle as stated above. As stated above after the defendant no.2 has filed the suit against the plaintiff and his uncle and obtained interim order against them, then the plaintiff and his uncle have violated the said court order and then recently the plaintiff has filed this false and frivolous suit against the defendant no.2 and his brothers by seeking declaration including defendant no.2's properties as stated above even if he know very much knowledge about the court order. On this ground also the application filed by the applicant/plaintiff for appointment of court commissioner for measure the suit properties at this stage is not maintainable either in law or on facts and the same is liable to be dismissed.

13. He further submits that the plaintiff's fore father also filed a declaration suit bearing O,S,NO.132/1968 against the father of the defendant no.2 and previous seller of the suit property. The said suit was also end with compromised as the father of the defendants are the owner in possession and enjoyment of the property measuring east-west 15 gaja and north-south 30 gaja towards eastern and northern side of the suit schedule property as per sale deed dated 15-06-1965. The father of the defendant no.2 has purchased the said property on 15-06-1965 itself before the plaintiff's predecessor purchased the property. Hence on this ground also the interim application of the applicant/plaintiff is not maintainable as per law and the same is liable to be dismissed. The burden is lies on the applicant/plaintiff to prove his case by adduce documentary evidence but without proving his case by adduce his evidence now at this stage the applicant/plaintiff is not liable to collect the collective evidence before his evidence which is not permissible under law. Similarly the applicant/plaintiff shall produce the documents to show his ownership, possession etc and also katha stands in his name for prove his title rights etc in respect of the suit property in all aspects in the above suit. But the applicant/plaintiff is trying to collect the evidence before his examination in the above suit. Hence the applicant/plaintiff is not liable to collect the collective evidence in respect of the suit property. As per law the applicant is not entitled to measure the measurements of suit property and also of the property mentioned in the said OS NO.442/2017 and its boundaries through any court commissioner as sought by him on the basis of his hallow and concocted, baseless defense without any documentary proofs and without before adduce his evidence in the above suit. Hence first of all the burden is lies on the applicant to prove his case first by adduce documentary

evidence in the above suit. But the applicant has filed this false and frivolous application before his evidence by sworn to the false affidavit in order to twist the nature of suit and to drag on the matter unnecessarily and also in order give trouble and mental torture to the defendant no.2 who is in actual possession of the suit property of the said OS NO.442/2017. Hence the application filed by the applicant is liable to be dismissed. The defendant no.2 has reserved his right to file any additional written objection if any in future in the above suit. This objection filed by this defendant no.2 is also adopted by the defendant no.1 and 3 also. Hence prays to dismiss the application.

14. Heard both side and perused.

15. in view of the above, the following points arises for consideration;

1. Whether applicant has made out the case for filing I.A No II under Order 26 Rule 9 R/w Sec. 151 of C.P.C?

2. What order ?

16. This court answers the above points as follows;

Point No.1:- In the Negative

Point No.2:- As per the final

order for the following;

-::REASONS::-

Point No.1:

17. This is the case filed by the plaintiff for the relief of declaration and Permanent injunction against the defendants. The plaintiff stated that, the plaintiff is the absolute owner of

the suit schedule property and the defendants are interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. Further in the affidavit annexed to the application the plaintiff contended that, there is dispute between the plaintiff and the defendant regarding boundaries. Hence this application was filed

18. This is the case filed by the plaintiff is the absolute owner of the suit schedule property along with extent and boundaries mentioned in the schedule, when such being the case there is no necessity to inspect and verify the written statement schedule property. To prove the same the plaintiff has filed this application. It amounts to collection of evidence. A local commissioner cannot be appointed solely to collect evidence because it is the duty of the parties to produce their own evidence. The Supreme Court and various High Courts have consistently held that the purpose of a local commissioner is not to gather substantive evidence for one side, but rather to assist the court in a matter that requires local investigation, such as verifying local facts, inspecting property, or ascertaining boundary markers Further the court may appoint a commissioner for the purpose of clarification of ambiguity. In the application the plaintiff not explained the ambiguity. Accordingly, no grounds are made out to allow the application. **Hence, point No.1 answered in the Negative.**

Point No.2:-

19. From the foregoing discussions and reasons stated therein and in view of my findings to point No.1, I proceed to pass the following:

ORDER

The application filed by the plaintiff under Order 26 Rule 9 R/w Sec. 151 of C.P.C. is hereby rejected.

(Dictated to the Stenographer, transcribed by her, corrected and signed by me and then pronounced in open court on 11th day of March-2026)

(Saritha Kumari A.M)

I Addl., Civil Judge & J.M.F.C

Nanjangud