

**ORDER ON IA No.6 FILED UNDER ORDER**  
**XXVI RULE 9 OF CPC**

The plaintiff has filed this suit against the defendants for the relief of Mandatory and Permanent Injunction.

2. When the matter is set down for arguments the plaintiff has filed application seeking appoint Court Commissioner to measure the Item No.2 of suit schedule property since defendants encroached the Item No.2 of suit schedule road and put up compound. In the affidavit filed in support of application

the plaintiff has stated that the Item No.2 of suit schedule road is Government Road and the defendants have illegally encroached the said Road and put up compound. Hence, in order to elucidate real facts it is just and necessary to appoint Government Engineer as Court Commissioner for local inspection. Accordingly, he sought for allowing the application.

3. The defendants have not filed objections despite sufficient opportunities.

Section 75 C.P.C. lays down that, "subject to such conditions and limitations as may be prescribed, the Court may issue a commission : (a) to examine any person (b) to make a local investigation

(c) to examine or adjust accounts or

(d) to make a partition.

And the provisions of Order 26 Rule 9 of the CPC reads below:-

**" 9.Commissions to make local investigations:-**

In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court: Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules."

4. A perusal of the aforesaid quoted provisions of Order 26 Rule 9 of CPC makes it abundantly clear that an order of

issuing Commission for the purposes of elucidating can be passed only and only in case it is deemed to be requisite or proper by the court concerned. The opening words in Rule 9 are "in any suit in which the court deems a local investigation to be requisite or proper". Thus, for exercise of powers/jurisdiction for issuing Commission for the purposes of elucidating any matter in dispute, the sine qua non is the satisfaction of the Court that it is requisite or proper to issue the Commission for the said purpose.

5. Further, Order 26 Rule 9 of Code of Civil Procedure envisages that in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. From the texture of the languages coined in Order 26 Rule 9 C.P.C., it is explicit that it does not make any distinction between the plaintiff and the defendant or it does not have any reference to show that a particular party viz., either the plaintiff or the defendant alone shall file an application under Order 26 Rule 9 CPC, with a prayer to appoint a Commissioner. What it transpires is, where the Court deems a local investigation to be requisite or proper in any suit for the purpose of elucidating any matter, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. And the expression 'elucidate' means to make lucid or clear, throw light upon, explain, enlighten. Where the Court is satisfied on the materials available on the record that a party is not able

to produce the desired evidence for reasonable circumstances, it may assist the party to appoint a 'Commissioner' to get the evidence. However, such evidence is not binding on the Court, which is to appreciate the same along with other evidence. The party can 'countermand' the evidence of Commissioner's report by giving any other evidence. As the object of Order 26 Rule 9 CPC, is not to assist a party to collect evidence where it can get the evidence itself, but the real object is for elucidating any matter in dispute by local investigation at the spot.

6. In this case the plaintiff has sought for the relief of Mandatory and Permanent Injunction in respect of alleged road. Mere oral assertion is not solve the dispute about the existence of alleged Item No.2 of suit schedule property.

7. No doubt, there can be no appointment of Commissioner for collecting evidence or gathering materials. However, the object of a Commission under Order 26 Rule 9 of the Code of Civil Procedure is not to collect evidence, which has to be done only by the Court, but for elucidating matters which are local in character, which can be done only local investigation at the spot. A Commissioner cannot decide the dispute between the parties to the suit. However, his report would help the Court in deciding the dispute. The appointment of Commissioner can be made, especially, when no prejudice would be caused to the opposite party, by such appointment. Therefore, in the interest of justice and in order to resolve the existence of alleged road and encroachment, a local investigation is requisite and proper. Accordingly, this court proceed to pass the following:

### **ORDER**

I.A.No.6 is allowed.

The Assistant Executive Engineer, Public Works Department, Nanjangudu is appointed as Court Commissioner to prepare the Sketch about the alleged existence of Item No.2 of suit schedule road and its encroachment.

Commissioner Fee is fixed of Rs.2,000/-.

Office to issue commissioner warrant forthwith.

Await Commissioner report.

Call on : 13/06.2025.

Prl. Civil Judge & JMFC.,  
Nanjanagudu.