

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC  
NANJANAGUDU**

**PRESENT**

**Sri. Sathisha K.G.,** B.A.,LL.B.  
Principal Civil Judge & JMFC., Nanjanagudu

**Dated: 4<sup>th</sup> day of August, 2025**

**ORIGINAL SUIT.611/2014**

**PLAINTIFF**        :: Sri. B. Swamy,  
                              S/o Late Basavashetty,  
                              Aged about 55 years,  
                              R/at 6<sup>th</sup> Cross, Srikantapuri Extension,  
                              Nanjanagudu Town.

(By Sri. K.S.M. Advocate)

**- V/s -**

**DEFENDANT**     :: Sri. H.P. Basavaraju,  
                              S/o Late Puttegowda,  
                              Aged about 63 years,  
                              Proprietor of Yajamaan Talkies,  
                              R/at Hullahalli Village,  
                              Hullahalli Hobli,  
                              Nanjanagudu Taluk.

(By Sri. B. Yogesh. Advocate)

**PARTIES TO IA.NO.16**

**APPLICANT /**  
**GPA HOLDER OF PLAINTIFF** :: Sri. H.S. Somashekar.

**- V/s -**

**OPPONENT/DEFENDANT**    :: Sri. Basavaraju

Provision under which the application is filed	Under order 26 Rule 9 R/w Section 151 of CPC
Relief sought for	To appoint Court Commissioner
The date on which the application is filed	26.06.2025
Number of the application	IA.No.16
The date on which the objections are filed by different opponents	15.07.2025
The date on which the orders were passed on the said application	04.08.2025

**ORDER ON IA No.16 FILED UNDER ORDER XXVI**  
**RULE 9 R/W SECTION 151 OF CPC .**

The Plaintiff has filed this suit against the defendant for the relief of Declaration and permanent injunction and such other reliefs court may grant deem fit.

2. At the stage of main arguments, the plaintiff has filed this application U/o 26 Rule 9 of C.P.C., praying to appoint a Court Commissioner for local inspection of the suit schedule property.

3. In the affidavit filed in support of I.A., the plaintiff has sworn to that, the plaintiff has purchased the suit schedule property under sale deed dated:13/09/1993 and thereafter he obtained assessment from concerned authority. He further

stated that, the defendant disputed his ownership and identification of property and in the cross examination he deposed that, suit property is not in existence. The defendant further deposed that, he has no objection to appoint court commissioner. Under these circumstances noting the existing state of affairs over the disputed properties and whether suit property is not part of defendant's property, it is just and necessary to appoint a court commissioner for local inspection of the disputed properties. Accordingly the plaintiff sought for allowing the application.

4. After receipt of application, the defendant has filed objection by contending that, application is not maintainable either under law and on facts. The documents produced by the defendant itself establish the fact that the defendant is the owner in possession and enjoyment of the 10 guntas land purchased under the sale deed dated:25/06/1963 and this property situates within the boundaries mentioned in the sale deed and further establish the fact that the plaintiff is not in possession of any site and not site as described in the plaint schedule exists. Hence, the documents produced by the defendant would be sufficient to decide the case and the

appointment of ADLR is not necessary. On these grounds and other grounds the defendant has sought for rejection of application.

5. For disposal I.A.No.16 following points arise for consideration:

1. **Whether appointment of a commissioner for local investigation is necessary for the purpose of elucidating the matter in dispute ?**
2. **What Order?**

6. Having heard arguments and my findings to the above points are as under;

Point No.1 : In the **Affirmative**

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

### **REASONS**

7. **Point No.1:-** 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."

8. 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.

9. 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.

10. In this case already oral evidence has been adduced by the witnesses and documents have been marked. On perusal of cross examination of Pw-1 and Dw-1 they have clearly disputed the boundaries and existence of suit schedule property. Mere oral assertion and oral denial by the other side is not solve the dispute if there is boundary and existence of suit property.

11. Whenever there is a dispute regarding boundaries or physical features of the property or any allegation of encroachment or existence of property as narrated by one party and disputed by another party, the facts have to be physically verified, because, the recitals of the documents may not reveal

the true facts and measuring of land on the spot by a commissioner may become necessary. It is always better if the parties are allowed to adduce evidence at the stage of trial for better appreciation of the facts which will help the Court in effectively deciding the main dispute between the parties.

12. The prayer in the I.A. is for an appointment of Commissioner for local inspection with the help of a commissioner to submit his report as per the title document of the plaintiff. Considering the nature of the dispute between the parties and the gravity of the issue and admitted position in the cross examination that there is boundary and existence of suit property dispute between plaintiff schedule property and hence, this court find that in view of the pleadings by the respective parties and stand in the respective statements, report by the Commissioner as to state on ground is necessary.

13. As seen from the schedule of property, as mentioned in the plaint, the plaintiff claims to be owner and possessor of property Site No.6, Janjar No.2010 measuring East to West 43 feet and North to South 23 feet, whereas the defendant claims that, his father was purchased 10 guntas of land under

registered sale deed. Therefore, if a commissioner is appointed, it would sub serve the issue clinching in this case. Therefore, in order to put a quietus to the litigation appointment of commissioner is necessary.

14. The Hon'ble High Court of Karnataka in the decision reported in 2019 3 KCCR 2831 (A Paul Rodrigues vs Dolphy Saldanha) held as under "However, the circumstances narrated above warrants the appointment of a Court Commissioner to resolve the dispute relating to the boundary and encroachment. It is made clear that the Court Commissioner is not empowered to give any report inasmuch as the possession of the parties over the suit schedule property is concerned. The Court Commissioner shall measure the property and report, if any encroachment made by the defendants into 'A' schedule property. The Court Commissioner is at liberty to get the assistance of ADLR, Survey Department for commissioning the work of measurement. Hence, in the circumstances, the writ petitions deserve to be disposed of with the aforesaid observations and is ordered accordingly."

15. 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.

16. In this case it is not the case of the defendant that in order to collect the evidence, appointment of Commissioner was sought by the plaintiff. Therefore, in the interest of justice and in order to resolve the boundary and existence of suit property and whether suit property is part of defendant's 10 guntas of land, a local investigation is requisite and proper. Accordingly, Point No.1 is answered in the **Affirmative**.

17. **POINT NO.2:-** When a Court Commissioner is appointed for measuring and fix the boundary in respect of Suit schedule property, it is necessary to appoint a technical person

who has know how of measuring the immovable property and ascertaining its boundaries. Therefore, the ADLR, Nanjanagudu would be the right person to conduct the survey the schedule property. Since suit schedule property has to be surveyed, it involves considerable work and expenses. Hence it is justified to tentatively fix the commissioner fee at Rs.1000/- subject to enhancement if required. Accordingly, in the light of the above discussion, this court proceed to pass the following:

**ORDER**

I.A.No.16 filed by the plaintiff U/o 26 Rule 9 of C.P.C., is hereby allowed and it is ordered that the ADLR, Nanjanagudu, is appointed as Court Commissioner to prepare the sketch of the suit schedule property and to note and report the boundaries, measurement and existence of suit property as prayed for.

- a) The plaintiff is directed to pay the commissioner fee forthwith.
- b) The plaintiff should take effective steps in co-operating with the Commissioner to file his report within 26 day of September 2025 from today.
- c) The Commissioner/ADLR is directed to visit the suit schedule property/disputed property after giving notice to both the parties and is required to file his report and plan within the above said period.

- d) Both parties are directed to present at the disputed property, to avoid unnecessary delay since this case is in the year 2014.
- e) Both side to file their memo of instructions without fail before court or at the spot while commissioner visit to the property.
- f) After completion of Commissioner work, the court commissioner is directed to furnish true copy of the report to the counsel representing the parties to the suit, while submitting the report to the court.
- g) Office to issue commissioner warrant forthwith.

(Dictated to the Stenographer directly on computer, typed by him, the same is corrected, revised, signed and then pronounced by me in the open Court, on this the 4<sup>th</sup> day of August, 2025)

**(SATHISHA K.G.)**  
Principal Civil Judge & JMFC,  
Nanjanagudu.