



**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC,
AT MAGADI.**

-:Present:-

Smt.Dhalakshmi.M., B.A.L., LL.B.,
Addl. Civil Judge & JMFC.,
Magadi.

Dated this the 16th day of October, 2025

O. S. No.217/2024

PLAINTIFFS : Smt.Shivamma,
W/o Gangadharaiah and others.

:Vs:

DEFENDANTS : Sri.Bettegowda
S/o Late Kambaiah and others.

I.A. No.II

**APPLICANTS/
PLAINTIFFS**

- : 1. Smt.Shivamma,
W/o Gangadharaiah,
Aged about 61 years,
2. Smt.Radha W/o Mahesh,
Aged about 38 years,
3. Smt.J.Geetha,
W/o V.Balarama,



2 **O.S./217/2024 (Or.)**

Aged about 34 years,

Residing at Chakrabhavi
Village,
Madbal Hobli,
Magadi Taluk,
Ramanagara District.

(By Sri.C.M, Advocate)

:Vs:

**OPPONENTS/
DEFENDANTS :**

1. Bettegowda S/o Late Kambaiah,
Aged about 80 years,
2. C.V.Narasimhamurthy,
S/o Bettegowda,
Aged about 43 years,
3. Manjunatha S/o late Bettegowda,
Aged about 40 years,
4. Byresh S/o Hucchappa,
Aged about 45 years,
5. Varalakshmi W/o Byresh,
Aged about 38 years,
6. Dhananjaya @ Deepu,
S/o Channabasaiah,
Aged about 43 years,

All are residing at
Chakrabhavi Village,
Madbal Hobli,



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Magadi Taluk,
Ramanagara District.

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

(Smt.Dhanalakshmi.M)
Addl. Civil Judge & JMFC,
Magadi.

**ORDER ON IA.NO.II FILED U/O 26 RULE 9 SECTION 151
OF CPC**

The plaintiff has filed applications U/O. 26 rule 9 R/w.Sec.151 of C.P.C., to appoint the court commissioner.

2. The application is supported by an affidavit and states that the plaintiffs have filed the present suit for declaration, permanent injunction and easementary rights in respect of the suit schedule property. The plaintiffs submit that Sy.No.122/3 measuring 0.32 guntas on the southern side of the land has been used as a 10-foot wide cart road by the



plaintiffs and their ancestors for movement of cattle, agricultural implements and access to their land.

It is further submitted that the defendants have illegally encroached upon the said road and have permanently fenced the compound with barbed wire. As a result, the plaintiffs their children, grandchildren and livestock are unable to use the road. The plaintiff's children have been unable to attend school for two and a half months and the school authorities have served notices regarding their absence. The plaintiff No.1 who is suffering from cancer, face serious difficulty in leaving the house and attending to their daily activities, including farming.

Despite informing the concerned authorities, neither the revenue officials nor the police have removed the illegal fence. The continued obstruction is causing severe inconvenience to the plaintiffs and preventing free access to their land and property. The plaintiffs therefore pray that this Hon'ble Court



may be pleased to appoint a commissioner or court agent to inspect the suit property ascertain the facts and submit a report. Hence, it is prayed that the application may be allowed.

3. The defendants have filed objections to the application and submit that they are in lawful possession of their lands as owners. The plaintiffs claim the existence of a cart path, but no such path exists and therefore, the question of the defendants closing it does not arise. The plaintiffs have no right, title, or interest in the defendant's land.

The plaintiff's interim application alleges that they are effectively under "house arrest" and that their children have received school notices due to absence but no documents have been produced to substantiate these claims. The plaintiffs also state that revenue authorities and police officials failed to



remove the alleged wire fence, but the authorities reportedly advised the plaintiffs to seek remedy through the court.

The defendants submit that the interim application is filed without any supporting documents, with the intention to harass the defendants. Since no cart path exists, there is no need to appoint a court representative or obtain a report. The application is therefore baseless and liable to be rejected. Hence, it is prayed that the application be dismissed.

4. Heard arguments by learned counsel for plaintiff and defendants counsel.

5. Upon hearing arguments and materials placed on record, the following points that arise for my consideration:

1. Whether the application filed by the plaintiffs U/O. 26 rule 9 of C.P.C., is deserves to be allowed ?

2. What order?

6. My answer to the above points are as under.



7 **O.S./217/2024 (Or.)**

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

Point No. 2 : As per order

for the following :

REASONS

7. **POINT NO.1**: The plaintiff filed the suit against the defendants for the relief of declaration, permanent injunction and easementary rights stating that, the plaintiff is the absolute owner and possessor of suit schedule property. The defendants encroached the portion of road over the suit schedule property.

8. On perusal of the interim application and affidavit, it is seen that the plaintiffs seek relief for declaration of easementary rights and permanent injunction over Sy. No.122/3 which they have been using as a 10-feet wide cart path since the time of their ancestors for access to their land movement of cattle and agricultural activities. The plaintiffs submit that the defendants have encroached upon the said



path and erected a permanent barbed wire fence thereby obstructing the plaintiffs, their children, grandchildren and livestock from accessing their property.

9. The plaintiffs have further stated that due to the obstruction their children have been unable to attend school and the plaintiff No.1 who is suffering from a serious illness, is facing difficulty in moving outside for treatment and daily necessities. Despite approaching the authorities, the alleged obstruction has not been removed resulting in severe inconvenience and restriction of the plaintiff's lawful use of their property.

10. It is a settled principle that the Court has the power to appoint a commissioner or court agent to inspect the property ascertain the facts on the ground and submit a report to assist in just and fair adjudication. In the present case the inspection is necessary to verify the alleged encroachment



assess the extent of obstruction and ensure the plaintiff's rights are protected. Allowing the appointment of a commissioner will not cause any undue hardship or prejudice to the defendants whereas refusal may cause irreparable hardship and injury to the plaintiffs including restriction of access to their property, disruption of daily life and hindrance to education and farming activities. Hence, the application is bonafide necessary for ascertaining the truth and is in the interest of justice. Accordingly, I answer point No.1 in the **Affirmative.**

11. **Point No.2 :-** In view of my findings on Point No.1, I proceed to pass the following:

ORDER

The application filed by Plaintiffs U/O XXVI Rule 9 R/w.Sec.151 of C.P.C, is hereby allowed.

The parties are hereby directed to suggest the name of the court commissioner.



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The Court Commissioner fee is fixed tentatively to Rs.5,000/-. This fee is to be paid by the Plaintiffs.

Hereby directed plaintiffs and defendants to file memo of instruction.

(Directly dictated to stenographer, typed by her, then corrected and pronounced by me in the open Court on this the **16th Day of October, 2025.**)

**Addl. Civil Judge & J.M.F.C.,
Magadi.**