

KASM210011542020



**IN THE COURT OF THE SENIOR CIVIL JUDGE &
J.M.F.C, AT HOSANAGAR**

PRESENT: SRI.FAROOQ. ZARE

B.A. (Law) LLB., LLM.

SENIOR CIVIL JUDGE & J.M.F.C,
HOSANAGAR.

DATED THIS THE 04th DAY OF NOVEMBER 2025

O.S.08/2020

Plaintiffs:-

1. Sri. Balakrishna
S/o Late Suryanarayana Bhatta
Aged about 48 years,
2. Sri. Balasundara
Late Suryanarayana Bhatta
Aged about 46 years,
3. Sri. Sampath Kumar
S/o Late Suryanarayana Bhatta
Aged about 38 years,

D.1 to 3 are all R/o Sulugodu,
Hosanagar Taluk,
Shivamogga District.

4. Smt. Latha
W/o Harish
Aged about 33 years,
R/o Maragalale, Guddekoppa
Post, Thirthahalli Taluk.

5. Smt. Uma
W/o Chandra Hasa K.
Aged about 58 years,
R/o Garthikere, Kammachi
Post, Thirthahalli Taluk.

[By Sri.S.N. Rajesh, Advocate]

-v/s-

- Defendant/s:-**
1. Smt. Prema W/o Late Govindachari,
Aged about 55 years,
 2. Sri. Y.A. Navina S/o Appuachari
Aged about 38 years,
 3. Sri. M. Shankara Shetty
S/o Venkappa Shetty
Aged about 62 years,
 4. Smt. Chandramathi
W/o Late Surendra Kini
Aged about 67 years,
 5. Sri. G. Sheshaiah Sheregar
S/o Manjunath Sheregar
Aged about 66 years,
 6. Smt. Padmavathi
W/o Late G. Ramachandra Sheregar
Aged about 55 years,

D.1 to 6 are all R/o Sulugodu Village,
Yedur Post, Nagara Hobli, Hosanagar
Taluk, Shivamogga District.

7. Sri. Teekappa
S/o Late G. Gundappa Gowda
Aged about 52 years,
R/o Humdgal Village, Yedur Post,
Nagara Hobli, Hosanagar
Taluk, Shivamogga District.

8. Sulugodu Grama Panchayath
Sulugodu, Nagara Hobli, Hosanagar
Taluk, Shivamogga District.

[D1 to D5 by Sri.D.N.Hiriyappa, Advocate]
[D6 by Sri.A.J.Karankara, Advocate]
[D7 by Sri.K.S.Achyuta V Rao. Advocate]
[D8 by Sri.B.S.Vinayak. Advocate]

PARTIES TO I.A.XXIV

Applicant No.3 : Sri. Sampath Kumar
(Plaintiff No.3)

Versus

Opponents : Smt. Prema and others
(Defendants)

**ORDER ON I.A.XXIV FILED UNDER ORDER
XXVI RULE 9 R/W SECTION 151 OF CPC.**

The plaintiffs have filed this application requesting the court to appoint ADLR attached to the Taluk Office Hosanagar, as court commissioner for local inspection of the suit schedule properties.

2. The defendants No.1 to 5 have filed their objections and defendant No.7 has also filed objections.

3. Heard both sides. The learned counsel for the plaintiffs has also filed written arguments and has produced one decision.

4. Perused the records.

5. The following points that would arise for my consideration are;

- 1) Whether the appointment of a commissioner is necessary to elucidate the matter in controversy between the parties?

2) What order?

6. My finding to the above points are as under;

Point No.1: In the Negative

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

REASONS

7. **Point No.1:** In the affidavit annexed to the application, plaintiffs have stated that, they are the absolute owners of the suit schedule properties by virtue of succession and they have been in peaceful possession and enjoyment of the same. They have further stated that, they had applied for a Haddubastu Survey to ascertain the boundaries and extent of the suit schedule property, which was duly conducted and a detailed Haddubastu report was issued on 24.07.2019. They have further stated that, the said Haddubastu report clearly demarcates the plaintiffs' property and encroachment in the suit 'B' schedule property. The Haddubastu report revealed that the defendants have encroached 26 guntas

of land in the suit schedule property and as per the Haddubastu sketch and report, defendants No.1 to 6 have encroached upon the northern portion of the suit schedule property, whereas defendant No.7 has encroached upon the eastern and southern portions.

8. The plaintiffs have further stated that, in order to ascertain the present position, topographical picture of the property, and verify the extent of encroachments, it is necessary to conduct a local inspection of the suit schedule property through an independent authority. The ADLR Hosanagar, being a competent authority in land measurement and survey is the best person for local inspection. They have also stated that, the said inspection would aid in identifying the extent of encroachment and illegal occupation of the suit schedule property by the defendants.

9. The defendants No.1 to 5 in their objections have opposed the said application, contending that the application has been filed to drag on the proceedings and

also to spoil the precious time of the court as well as to harass the defendants. The application is a belated one. They have further contended that, the defendants are in possession of suit 'B' schedule property prior to 1970 and they have not at all encroached suit 'B' schedule property as alleged in the plaint as well as in the affidavit filed along with the application.

10. The defendant No.7 in his objections has contended that, according to the version of the plaintiffs, the survey had been conducted and in the said survey, it was reported that there was an encroachment by the defendants. Now he cannot seek the assistance of the court to appoint a court commissioner for local inspection, which is already on record.

11. It is submitted in the written arguments on behalf of the plaintiffs that the appointment of a court commissioner is essential to ascertain the truth and proper adjudication of the dispute. It is also submitted

that, the encroachments made by the defendants, as revealed in the Haddubastu Survey dated 24.07.2019 cannot be conclusively adjudicated without a local inspection by an impartial and technically qualified court commissioner.

12. The learned counsel for the defendant No.1 to 5 has argued that according to the plaintiffs, Ex.P.9 is Haddubastu sketch and they can examine the author of Ex.P.9. However, now the plaintiffs are trying to collect the evidence and the application is a belated one.

13. The learned counsel for defendant No.7 has argued in line of his objections and has prayed to reject the application.

14. Records indicate that, the plaintiffs have brought the suit for declaration of their title, for declaring grant certificates and license issued by the Grama Panchayath Sulugodu Village in favour of the defendants within the boundaries of suit 'B' schedule property are

null and void and not binding upon them, for recovery of vacant possession of suit 'B' schedule property and for perpetual injunction. It is to be noted that, when the case was set down for reply arguments finally, this application came to be filed seeking the appointment of a court commissioner. According to the plaintiffs, they are the absolute owners of 4 acre 11 guntas of land in Sy. No.38/2 situated at Sulugodu Village by virtue of succession and inheritance and suit 'B' schedule property is encroached by the defendants No.1 to 6 and defendant No.7. They have pleaded that, they have applied for Haddubastu sketch relating to the suit schedule property and Haddubastu report was submitted on 24.07.2019 which indicates that 26 guntas of land has been encroached and defendant No.1 to 6 have encroached northern side of suit schedule property whereas defendant No.7 has encroached eastern and southern portion of suit schedule property. The defendants No.1 to 5, in their written statement, have denied the alleged encroachment.

Likewise, defendant No.7 has also denied the alleged encroachment as pleaded in the plaint.

15. Already parties have let in evidence both oral as well as documentary in support of their case. Since the plaintiffs have claimed that 26 guntas of land, which is 'B' schedule property has been encroached by the defendant No.1 to 7, they have sought for recovery of the suit 'B' schedule property from these defendants. The burden cast upon the plaintiffs to establish the alleged encroachment to an extent of 26 guntas of land by the defendants No.1 to 7. In this regard the plaintiffs have apart from their oral evidence have also relied upon certified copy of Haddubastu sketch in terms of Ex.P.9. In the plaint as well as in this application under consideration, the plaintiffs have stated that, as per this Haddubastu sketch, the defendants No.1 to 7 have encroached 26 guntas of land in suit 'A' schedule property. Pertinently, the plaintiffs have filed this application for appointing ADLR Hosanagar as court commissioner for the local inspection of the suit schedule property. One of the grounds urged in

the application by the plaintiffs is that, the ADLR Hosanagar is an independent authority and a competent authority in land measurement and survey. It is worth to mention here that the Haddubastu sketch has been prepared by surveyor Hosanagar and this sketch has been prepared by an official of the competent authority. Another ground urged in the application by the plaintiffs is that, in order to ascertain the present position topographical picture of the property and verify the extent of encroachments, the appointment of court commissioner is quite essential. It is worth to mention here that, no necessity arises to ascertain the present position and topographical picture of the property by looking into the evidence placed on record by both the sides. One more ground urged in the application is that the appointment of court commissioner is necessary to verify the extent of the encroachment. It is relevant to note here that the plaintiffs, by relying upon the Haddubastu sketch, have pleaded in their case that, 26 guntas of land has been

encroached and they have all along through out the trial have pleaded so.

16. It is stated in the application that, the local inspection of the suit schedule property would aid in identifying the extent of encroachment and illegal occupation of the suit schedule property by the defendants. It is worth to mention here that, already Haddubastu sketch has been made by the survey official in the suit schedule property and an extent of 26 guntas of land has been allegedly shown as encroached area in the land bearing Sy. No.38/2. Such being the case, it is understandable that the plaintiffs have again claimed for the appointment of court commissioner for local inspection, which cannot be accepted. Because to appreciate the alleged encroachment to an extent of 26 guntas, Ex.P9 will come to the aid of the court in elucidating the dispute between the parties. From the tenor of the assertion made in the application, as rightly pointed out by defendants No.1 to 5, the application has

been filed to drag on the proceedings and as rightly contended by the defendant No.7, the material with regard to the alleged encroachment is already on record. Therefore, the application is meritless and as such, the submissions made in the written arguments are not acceptable. Likewise, the decision relied upon by the learned counsel for the plaintiffs reported in 2024 Supreme (Online) (KAR)9695= 2024KHC 15758 in the case of H.N. Chandraiah V/S Lakshminarasimhaiah cannot be made applicable to the case on hand. Because in that case, an application for appointing a court commissioner was filed by defendant No.1 to identify the property allotted to the plaintiffs as well as to the predecessors in title of the defendants. The core issue involved in that case and in the case on hand are altogether different. Hence, the application is liable to be rejected. Accordingly, point No.1 is answered in the Negative.

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

ORDER

I.A.XXIV filed by the plaintiffs u/o
XXVI Rule 9 R/w section 151 CPC is
hereby rejected.

(Dictated to the stenographer, transcribed and typed by him, the transcript revised, corrected and then pronounced by me in the Open Court on this **04.11.2025**).

(Farooq Zare)
Senior Civil Judge and J.M.F.C.,
Hosanagar.

