



**IN THE COURT OF THE ADDL.SENIOR CIVIL JUDGE &
JMFC, GUBBI**

Present :

SMT. POORNIMA K. YADAV, B.A.LL.B., LL.M.,

Addl. Sr. Civil Judge & JMFC, Gubbi.

Dated this the 08th Day of June 2026

FDP 31/2024

Petitioner:

Smt. Rudranamma
D/o Late Siddalingapa,
W/o Shivanandappa,
Aged about 60 years,
R/at Jakkanahalli Village,
Bettadahalli Post,
Hagalavadi Hobli,
Gubbi Taluk,
Tumakuru District.

(By Sri. L.K., Advocate)

V/s

Respondents: 1.

Basavaraju
S/o Late Kodirudraiah,
Aged about 62 years,
R/at Jakkanahalli Village,
Bettadahalli Post,
Hagalavadi Hobli,
Gubbi Taluk,
Tumakuru District.

2.

Smt. Shivamma
D/o Late Kodirudraiah,
W/o K.S. Somashekar,
Aged about 66 years,
R/at No. 85, Appaiah Complex,
Near Government School,
Venkatapura 1st Main, 8th Cross,
Koramangala,
Bengaluru.



2. Sri. Yogeesh
S/o Late Jayamma,
Aged about 26 years,

Respondents No. 3 and 4 are
R/at Thanganahalli Village,
Anupanahalli Post,
Koratagere Taluk,
Tumakuru District.

(By Sri. H.M.H., Advocate)

PARTIES IN IA No.II.

Applicant : Rudranamma
(Petitioner)

V/s

Respondent : Basavaraju and Others
(Respondents)

Provision under the Application	Under Order 26 Rule 9 of CPC
Application Relief sought for	To appoint Court Commissioner to effect partition of the property as per judgment and decree of RA No. 109/2019.
The date of the application is filed	02.03.2026
Number of Application	II
Date of objection filed by the defendants	25.03.2026
Date of orders passed	08.06.2026

Sd/-

(POORNIMA K. YADAV)
Addl. Senior Civil Judge &
JMFC, Gubbi.



ORDER ON I.A. No.II

The petitioner through his counsel filed the present application U/o 26 Rule 9 of CPC, seeking to the Thasildhar, Gubbi Taluk or ADLR, Gubbi Taluk as the Court Commissioner to effect partition of the suit schedule property as per judgment and decree of RA No. 109/2019.

2. The application is accompanied with the affidavit of the petitioner, wherein it is stated that, the respondent No. 1 filed suit and in RA No. 109/2019 seeking for partition and separate possession in respect of suit schedule property and after contest judgment is passed on 23.04.2024 as per which the petitioner is entitled for half share in the suit schedule property. On the basis of the said judgment, preliminary decree is drawn. Hence, the present application is filed seeking for demarcation of the property as per the judgment and decree of Hon'ble Prl. District and Session Judge, Tumakuru in RA No. 109/2019. Hence, sought to allow the application.



3. The respondent No.1 through his counsel filed objection and contended that the application is not maintainable and it is liable to be rejected. It is contended that the respondent No.1 filed RA No. 109/2019 against the petitioner and others which came to be allowed by setting aside the judgment and decree of this court by ordering that the petitioner and the respondent are entitled for share of Late Veerappa i.e. the grandfather of the petitioner and the respondent No.1 and further directed to effect partition. The provision mentioned in the application is not maintainable. Hence, sought to reject the application.
4. Heard both the counsel.
5. Upon hearing and based upon material available on record the point that arise for my consideration is:-

Whether the application deserves to be allowed for appointment of court commissioner for the purpose of Demarcation of suit schedule property as per judgment and decree



**of RA No. 109/2019 dated
23.04.2024?**

6. My finding to the above point is in the **“Affirmative”** for the following:

REASONS

7. The materials on record discloses that the present petition is filed seeking for appointment of court commissioner for demarcation of the suit schedule property as per judgment and decree of RA No. 109/2019 dated 23.04.2024 passed by the Hon’ble Prl. District and Session Judge, Tumakuru.
8. The materials on record discloses that OS No. 48/2016 was filed seeking relief of partition by reopening earlier partition dated 06.07.1952. The said suit came to be dismissed vide Judgment dated 22.02.2019 and same was challenged in RA No. 109/2019. The said regular Appeal came to be partly allowed vide Judgment dated 23.04.2024. The Order portion of the judgment in RA No. 109/2019 reads as under:

“ORDER”



Appeal filed by the appellant/plaintiff U/Sec. 96 of the Code of Civil Procedure, is hereby partly allowed.

The judgment and decree passed by the Additional Senior Civil Judge and J.M.F.C., Gubbi, in O.S. No. 48/2016 dated 22.02.2019 is set aside.

The suit filed by the appellant/plaintiff is partly decreed.

It is declared that the plaintiff, defendants No.3 and 4 are entitled 1/6th share each, defendant No.1 is entitled 3/ 6th share in Sy. No. 11 situated at Jakkanahalli Village, Hagalavadi Hobli, Gubbi Taluk, measuring East to West 187 ½ gaja and North to South 44 gaja in the property allotted to late Veerappa in the registered partition deed dated 06.07.1952.

Draw decree accordingly,

Send back the records to the trial Court along-with copy of this Judgment.”

- 9.** As per the said Judgment it is clear that the plaintiff and the defendant No. 1, 3 and 4 are entitled for share in Sy. No.



11 i.e. the suit schedule property in the property allotted to late Veerappa in the registered partition deed dated 06.07.1952.

10. This shows that the share of said Veerappa is already allotted in the registered partition deed dated 06.07.1952. Hence, it is necessary to appoint the Court commissioner in the present proceedings for demarcation of the shares of the plaintiff and the defendant No. 1, 3 and 4.

11. At this juncture I would like to place reliance on the judgment of **Hon'ble Supreme Court of India reported in (2009) 9 SCC 173 between P.K. PALANISWAMY V/s N ARUMUGHAM AND ANOTHER**, wherein it is held that,

“Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the applications were not maintainable or that the order passed thereon would be a nullity. It is a well settled principle of law that mentioning of a wrong provision or non mentioning of a provision does not invalidate an order if the court



and/or statutory authority had the requisite jurisdiction therefor.”

12. In the said circumstances, the objection raised by the counsel for the respondent No.1 that the provision mentioned in the present application is not maintainable cannot be considered. Hence, this court is of the opinion that it is just and proper to appoint the surveyor attached to the office of Thasildhar, Gubbi as the Court Commissioner for demarcation of 1/ 6th share each of plaintiff, defendant No. 3, 4 and 3/ 6th share of defendant No.1 in the property allotted to Late Veerappa in the registered partition deed dated 06.07.1952, as per judgment and decree of RA No. 109/2019 dated 23.04.2024. Accordingly, I proceed to pass the following:

ORDER

**IA No. II filed by the
petitioner U/o 26 Rule 9 of,
CPC is hereby allowed.**



**Thasildhar, Gubbi is hereby
appointed as the Court
Commissioner for demarcation
of suit schedule property as
per judgment and decree of RA
No. 109/2019 dated
23.04.2024.**

**Parties to bear their own
costs.**

(Dictated to the Stenographer directly on computer, typed and print out taken by her and then corrected, signed and then pronounced by me in the open court on this the **08th day of June 2026**).

Sd/-
(POORNIMA. K. YADAV)
Addl. Sr. Civil Judge & JMFC,
Gubbi