

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC AT
GUBBI**

Dated this the 16th day of June 2025

**:: PRESENT::
KIRAN S.P., B.B.M., LL.B.,
Prl. Civil Judge, Gubbi.**

OS No. 243/2016

Plaintiff : - Bhagavan Krishna

V/s.

Defendants :- Muddalagirishetti and others

CAUSE TITLE ON IA NO.11

Applicant : - Bhagavan Krishna (plaintiff)

(By Sri. B.R.S., Advocate)

Respondents :- Muddagirishetti and othres

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

**: ORDER ON IA NO.11 UNDER OEDER 26 RULE 9
OF CPC**

The plaintiff has filed this application Under Order 26 rule 9 of CPC for appointment of surveyor attached to survey department, Gubbi Taluk as Court Commissioner to measure the suit schedule Sy.No.90/17 of Somalapura Village and to report the same with sketch.

02. In the accompanying affidavit the plaintiff submits that he has filed this suit for permanent injunction. As per the survey sketch and report prepared by the Taluk Surveyor, Gubbi Taluk, the defendants have illegally encroached the suit schedule Sy.No.90/17 of Somalapura Village. But the defendants have specifically denied the encroachment of the suit schedule property. As such a dispute with respect to the encroachment of the suit schedule property has been raised in the above suit. In order to decide the matter in dispute conclusively the appointment of a commissioner is necessary. The appointment of a commissioner is noway causes injury or loss of the other side. The defendants have got a right to cross examining the commissioner and to put the report submitted by the commissioner. No prejudice or hardship would be caused to the other side, if the accompanying application is allowed or otherwise he would be put to great loss and trouble which could not be compensated in any manner. On these grounds he prayed for allow the application.

03. Defendants filed objection submitting that the application filed by the plaintiff is not at all maintainable either in law or on facts and liable to be dismissed in limine. The allegations made in the course of the affidavit annexed to the application are completely false and baseless. The defendants are the absolute owners

and in possession and enjoyment of the house and vacant sites. The defendants No.1 and 2 were houseless persons. One Jayamma and defendant No.2 gave requisition before the competent authority for grant of sites for construction of dwelling house. By considering the requisition, the Somalapura Grama Panchayath has granted the site to the said Jayamma and defendant No.2. The concerned authority has issued Hakkupatra on 15.08.1982. On the date of grant, the concerned authority delivered the possession of the said sites to Jayamma and defendant No.2. From the date of grant, the said Jayamma and defendant No.2 are in possession and enjoyment of the sites. After grant, said Jayamma and defendant No.2 have obtained license from the Gramapanchayath and constructed the house. And they are residing therein along with their family members. Except the said Jayamma and defendant No.2 no one is having any manner of right, title, interest or possession over the above said house and vacant sites and paying kadayam regularly to the Government. In order to grab the said property the present suit is filed. At no point of time, the plaintiff is in possession and enjoyment of the above said house and vacant sites. It is false that, they have blocked the eastern side of the suit schedule property by barbed fence and tried to interfere over the same. This application is filed to drag on the proceedings and there

is no bonafide in the application. The appointment commissioner for local investigation does not arise. The plaintiff has not produced any piece of documents to show that, he is the owner of the suit schedule property. Now he wants to take help of commissioner for collection of evidence. Hence he pray to dismiss the application.

04. Heard both sides.

05. In view of the above, following points would arise for my consideration:

1. Whether the plaintiff has made out the case for allowing IA 11 filed under order 26 rule 9 of CPC?

2. What order?

06. The finding on the above points are as follows:-

Point No. 1: In the Affirmative.

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

R E A S O N S

07.POINT NO.1: The Plaintiff has filed this suit for declaration of title and for vacant possession and for permanent injunction. When the suit is posted for arguments, the plaintiff has come up with this application.

08. It is the case of the plaintiff that the defendants are in illegal possession and put up unauthorized construction over the 'B' schedule property.

09. But defendants have contended that they have not encroached any portion of suit schedule property. Therefore the only remedy would be appoint a Court commissioner to adjudicate the matter effectively with due notice to the both the parties, so that Court can arrive an effective finding in the matter. As discussed above it necessary to appoint of Court commissioner to the matter in dispute. After completion of evidence on both sides, if it is found that there is any ambiguity in the evidence adduced by the parties, then the Court may call the commissioner for the purpose of clarification of such an ambiguity. In this regard decision reported in ***ILR 2007, KAR 3029, (Miss. Renuka V/S Thammanna and others)*** is relevant, where in it is held that:

It is well settled position of law that Court commissioner cannot be appointed to collect evidence in support of a claim. After completion of evidence on both sides, if it is found that there is any ambiguity in the evidence adduced by the parties, then the Court may appoint a commissioner for the purpose of clarification of such an ambiguity

10. In the instant case, evidence of the both parties already completed and also there is ambiguity in the evidence adduced by the parties in respect of encroachment of land, therefore appointment of Court commissioner is necessary. In order to resolve the ambiguity it is necessary to issue the commissioner for local investigation and obtain his report does not in any way prejudice the defendants as they will get liberty to file objection to commissioner report and cross examine the commissioner, if required. The case is already posted for arguments as such issue of commission does not result in collection of evidence. It is only remedy to adjudicate upon the matter in controversy effectively and completely. For the above reasons I answer point No.1 in the affirmative.

11.POINT NO.2 : For the aforesaid discussion on Point No.1, this Court proceeds to pass the following:

:ORDER:

I.A no.11 filed by the plaintiff under Order 26 Rule 9 of CPC is hereby allowed.

The Surveyor attached to the Survey Department, Gubbi Taluk (Taluk Office), Gubbi is hereby appointed as Court commissioner for local inspection of suit schedule properties and carry out memo of instructions filed by the both parties.

Commissioner fee is fixed for Rs. 2000/-.
Plaintiff shall deposit commissioner fee on or
before next date of hearing.

Office is hereby directed to issue
commissioner warrant after compliance of the
order by the plaintiff.

*(Orders dictated to the stenographer on-line computer, computerized by him, revised,
corrected and then pronounced by me in open court on this 16th day of June 2024)*

(KIRAN S.P)

Prl. Civil Judge & JMFC, Gubbi.