



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

**Dated this the 09<sup>th</sup> day of June 2023**

**PRESENT :**

**SRI RAGHUNATHA GOWDA K.T.**

*B. Com., L.L.B.*

**Prl. Civil Judge & JMFC,  
Madhugiri.**

**O.S.No.281/2020**

**PLAINTIFF :** Sri. Chikkarangaiah  
S/o Yale Rangaiah  
aged about 65 years,  
R/o Thagghihalli Village,  
Puravara Hobli,  
Madhugiri Taluk.

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

**Vs/-**

**DEFENDANT :** Sri. Govardhan  
S/o Muniyallappa  
aged about 40 years  
R/o 'Drakshi Thotada Mane'  
Opp: G.R. Resort,  
Byyanahalli Village,  
Jalahalli Hobli,  
Bangalore North,  
and also R/o Poojarahalli  
Village, Puravara Hobli,  
Madhugiri Taluk.

(by Sri. B.H.P., Advocate)

**I.A. No. II**

Applicant : Govardhan

.... Defendant

**Vs/-**

Opponent : Chikkarangaiah

.... Plaintiff

**ORDER ON I.A. No.II**

When the matter posted for plaintiff evidence at the time, the present application is filed by the defendant under order XXVI Rule 9 R/w Section 151 of CPC to appoint a ADLR, Madhugiri to measure the suit land as well as defendant land as per memo of instructions filed by the both the parties and submit his report.

2. In support of this application the defendant filed his affidavit contended that the plaintiff filed the suit against him for relief of Declaration and Permanent injunction. The plaintiffs owns land bearing Sy.No.222 and he owns land bearing Sy.No.223 and 224 of Kondavadi village. Further he contended that the plaintiff has encroached his land to extent of 19 guntas in Sy.No.223 and 1 acre 11 guntas in Sy.No.224. The said suit land is western side of his property. The lands are adjacent to each other, the dispute can be resolved only by measurement of said survey numbers. In order to eliciting the real question in controversy between the parties the appointment of commissioner is very much necessary. If the application is



allowed no loss or hardship caused to the plaintiff. Hence he prays to allow this application.

3. Per contra plaintiff counsel filed objection to the application contended that the application filed by the defendant is not maintainable either in law or facts and there is no sufficient reason to allow this application. Further he contended that the right of parties are to be adjudicated by this court on the basis of oral and documentary evidence adduce by the both the parties. At this stage the present application is not maintainable and after recording the evidence if this hon'ble court comes to conclusion that the appointment of court Commissioner is necessary. Hence he prays to reject the said application.

4. Heard the arguments of both side, the learned counsel for defendant relied on the decision reported in 2023 (1) KCCR 637 in between Sri. Shadaksharappa V/s Kumari Vijayalakshmi and others.

5. After perusal of the records, the following points arise for my consideration.

1. Whether the appointment of court Commissioner is necessary at this stage ?
2. What order?



6. My answer to the above points is as follows:

1. Point No.1 : In the Affirmative
2. Point No.2 : As per the final order  
For the following

### **REASONS**

7. **Point No.1:** The defendant filed this application to appoint the ADLR., Madhugiri, to measure the suit property and land bearing Sy.No.223 and 224 of Kondavadi village, because the plaintiff has encroached his property to extent of 19 guntas in land bearing Sy.No.223 and 1 acre 11 guntas in land bearing Sy.No.224. The only dispute between the parties with regard to encroachment so that reason appointment of commissioner is very much necessary.

8. On careful perusal of entire materials available on records it clearly discloses that the plaintiff filed this suit for relief of declaration of ownership under grant certificate dated 11-09-1978 and also seeking Permanent Injunction. Further on plaint averments at para No.5 discloses that with regard to measurement of the suit property and defendant property. As per say of plaintiff the suit property is comes towards west of the said Kondavadi road not east of the said road now the defendant is obstructing in enjoying the suit property. So that reason he filed the suit.



9. Per contra, in the written statement at para No.9 the defendant contended that he purchase the land bearing Sy.No.223 and 224 through Registered Sale Deed dated 27-06-2013. Thereafter he applied for hadbustu of above said survey number. After measurement it is found that the plaintiff has encroached 19 guntas and 1 acre 11 guntas in the above said survey numbers and he agreed to vacate the encroached area now he filed the suit. On perusal of the records the only dispute with regard to the say of the plaintiff that he has not encroached any property belongs to defendant, the defendant contended that the plaintiff has encroached the property. Further with regard to the plaintiff has encroached the defendant property or not the said aspect it will be decided the competent authority / technical person i.e., ADLR / Surveyor only.

10. Further on perusal of the judgment relied on by the defendant reported in 2023 (1) KCCR 637. I have gone through the above said judgment the Hon'ble High Court of Karnataka discuss with several aspect with regard to appointment of commissioner under Order 26 Rule 9 and 10 and issued a guidelines for appointment of commissioner. In the above said judgment at para No.14 the Hon'ble High Court held that the appointment of commissioner is discretionary power of the court. Further appointment of the commissioner before the trial



or after the trial, the decision must be taken with due regard to the possibility of reducing or eliminating the need to record the oral evidence of witnesses to prove on issue which could be effectively decided with the aid of report. In a dispute relating to the existence of pathway, stream, pond, well or dispute relating to the boundary between adjoining holders, encroachment, easement of air and light, construction of building in violation of set back rules or relating to the authenticity of a document, signature / thumb impression. The above said are a few by way of illustration. In the above said judgment the Hon'ble High Court clearly held that in what circumstances the appointment of commissioner is very much required to resolve the dispute between the parties. In the present case the only dispute between the plaintiff and defendant that as per say of defendant the plaintiff has encroached the property. The plaintiff contended that the suit property is comes towards west of the said Kondavadi road and not east of the said road. With regard to encroachment and enjoyment of the suit property the appointment of commissioner is very much necessary. Admittedly in the present case the evidence of plaintiff is not yet commenced and if the appointment of commissioner there is no collection of evidence and in order to resolve the dispute between the parties it is just and necessary to allow this application. Hence for the above said discussion I answer the point No.1 in the Affirmative.



11. **Point No.2:** For the above discussion I, proceed to pass the following order;

**ORDER**

The I.A.No.II filed by the defendant under order XXVI rule 9 R/w Section 151 of CPC is hereby allowed.

Further the ADLR, Madhugiri is appointed as a Court Commissioner and to conduct the commission work and submit his report with regard to suit property and land bearing Sy.No.223 and 224 of Kondavadi village.

Further both the parties are directed to filed a memo of instructions.

No order as to cost.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in open court on this **09<sup>th</sup> day of June 2023**)

(Raghunatha Gowda K.T.)  
Prl. Civil Judge & JMFC,  
Madhugiri.