



**IN THE COURT OF THE PRL.CIVIL JUDGE AND
JMFC., Sira**

Present: **Kum. Sharmila E.J.** B.A.LL.B., LL.M.,

Addl. Civil Judge & JMFC., Sira.

Dated this the **2nd day of August 2025**

Original Suit.No.474/2012

Plaintiffs/s: Sri. B.P. Siddaiah dead by his Lr's
Narasimhaiah and others

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

-V/S-

Defendant/s: Narasimhaiah dead by his Lr's and others

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

PARTIES TO THE IA. No. XVIII

Narasimhaiah

.... **Lr's of plaintiff (a)**

-V/S-

Opponent: Narasimhaiah dead by his Lr's
and others

.... **Defendants**

**Order on application filed by the plaintiff U/o
XXVI Rule 9 and 10 r/w 151 of CPC**

This is an application filed by the plaintiff under Order
26 Rule 9 read with Section 151 of the Code of Civil
Procedure, seeking appointment of the Assistant Director of
Land Records, Sira Taluk as a Court Commissioner to



measure the suit schedule and written statement schedule properties and submit a report before this Court.

2. It is averred in the affidavit annexed to the application that the suit has been filed for declaration and other reliefs in respect of the land bearing Sy. No.60/P1, measuring 2 acres and 7 guntas, situated at Jadarahalli Village, Bukkapattana Hobli, Sira Taluk. It is stated that this land was granted by the Government to the plaintiff's father, B.P. Siddaiah, in the year 1998. On the other hand, the land referred to by the defendants, bearing Sy. No.29, measuring 4 acres and 8 guntas, was granted to one Narasimhaiah in 1962 and is also located in the same village. According to the applicant, the core issue in the suit revolves around the identification, location, and demarcation of these two properties, and whether they are in fact adjacent or overlapping in any manner.

3. The plaintiff further states that both parties are at variance in regard to the boundaries of their respective



properties. While the plaintiff claims that the defendants have encroached upon his land, the defendants have completely denied such allegation and assert that the lands are different in survey numbers and location. In light of this dispute, the plaintiff prays for appointment of the Assistant Director of Land Records, Sira Taluk, to conduct a local inspection, measure both properties, and submit a report.

4. On the other hand, the defendants have filed objections opposing the application. They argue that the application is legally not maintainable and is a tactic to delay the proceedings, especially since the matter is already at the stage of arguments by the defendant's side. The defendants emphasise that the boundaries of the suit schedule property and the written statement schedule property are clearly distinct and have been admitted as such by the parties during the course of trial, including in the cross-examination of the plaintiff's witnesses. It is their specific case that Sy.



No.60/P1 and Sy. No.29 are not adjacent to each other, nor do they overlap in any manner. In view of this, they contend that there is no necessity to appoint a Commissioner at this belated stage, and hence prayed to reject the application.

5. Heard both the sides and perused the materials available on record. Ongoing through the averments stated in the application accompanying the affidavit, the following points arise for the consideration of this Court:

Points

- 1.** Whether appointment of a commissioner for local investigation is necessary for the purpose of elucidating the matter in dispute?
- 2.** What Order?
- 6.** My findings to the above points are as under:
Point No.1: In the Affirmative
Point No.2: As per the final order for the following:

Reasons



7. Point No.1: It is a settled principle of law, that the purpose of appointing a commissioner under Order XXVI Rule 9 CPC is to assist the Court in elucidating matters in dispute, which cannot be properly appreciated by oral evidence alone.

8. In the present case, the primary dispute is whether the land claimed by the plaintiff in Sy. No.60/P1 overlaps or is in proximity to the land claimed by the defendants in Sy. No.29. The defendants have categorically contended that both the lands are distinct and not adjoining. The plaintiff, on the other hand, asserts that a Commissioner's report is necessary to establish the physical identity and demarcation of both properties. It is settled law that the power under Order 26 Rule 9 CPC can be invoked when the Court deems it necessary to elucidate matters in dispute, especially in cases involving boundary disputes or identification of property. The mere stage of the proceedings cannot be the sole ground to reject the application if the assistance of a Commissioner would materially help the Court in just adjudication. It is equally settled that a Commissioner cannot



be appointed to collect evidence or to fill gaps in pleadings, but where there is a genuine dispute regarding the physical features or identification of the land and where such facts cannot be easily established through oral or documentary evidence appointment of a Commissioner is appropriate.

9. In the present case, both parties assert title to government-granted lands with different survey numbers. However, the dispute has arisen due to alleged overlapping or misidentification of boundaries, and whether the suit schedule property lies adjacent to or interferes with the defendants' land. Though the defendants claim that the boundaries are not overlapping and are separately identified in the record, the plaintiff disputes this and has stated that the measurement by a competent authority is necessary. In such circumstances, this Court is of the opinion that the appointment of the commissioner would aid the Court in determining the precise location and extent of both properties and clarify the disputed issue of alleged encroachment or overlapping, if any. Even though the case has reached the argument stage, it is



settled law that appointment of a Commissioner can be made at any stage of the proceedings if it is necessary to assist the Court in arriving at a just decision. The report will only aid the Court and does not take away the discretion of the Court in appreciating the evidence already on record. On the contrary, if the application is rejected without clarity on the physical status of the lands, it may cause irreparable injury and delay the effective adjudication of the rights of both the parties. Therefore, in order to meet the ends of the justice, it is just and necessary to appoint the Court Commissioner. Hence, this Court proceeds to answer Point No.1 in the ***“Affirmative”***.

10. Point No.2: In view of the above discussion and reasons assigned, this Court proceeds to pass the following:

ORDER

IA No.18 filed by the plaintiff under
Order XXVI Rule 9 read with Section 151 of
CPC is hereby allowed.



Consequently, the Assistant Director of Land Records, Sira Taluk, is hereby appointed as Court Commissioner to conduct a local inspection and survey of the properties described in the suit schedule and the written statement schedule and to submit a detailed report before the Court within two months from the date of this Order. Both parties and their learned counsel are directed to be present at the time of the survey.

The Commissioner's fee is tentatively fixed at Rs.2,000/-, which shall be paid by the plaintiff.



Issue Commission Warrant, if
Commissioner fee is deposited and PF
paid.

Both parties are directed to file
their respective memos of instructions
on or before 16.08.2025.

The Office is directed to send a
copy of this order along with the memo
of instructions and commission
warrant to the Assistant Director of
Land Records, Sira Taluk.

Call on:08/10/2025

Sd/-

**Addl. Civil Judge & JMFC.,
Sira.**