

Order on application filed by the plaintiffs U/o 26
Rule 9 r/w Sec.151 of CPC

This application is filed by the plaintiffs under Order XXVI Rule 9 r/w Sec.151 of CPC prays to appoint a Taluka Surveyor as Court commissioner to visit plaint schedule property and to make local investigation to ascertain the alleged 9 feet road existed in the land of defendants and submits the report with regard to the actual possession of the suit schedule property to the court to enlighten true facts.

2. In the accompanying affidavit, the plaintiffs have sworn to an affidavit stating that the plaintiffs and the villagers are jointly in peaceful possession and enjoyment of 9 feet road which leads from Gollarahatti to Bijjihally. The defendants are interfering with the peaceful possession and enjoyment of the same. There is no other road except the above said road, the villager are using the said road since the time immemorial without anybody interference. The defendants unnecessary trying to encroach the said road. The defendants have no manner of any right over the above said road. To ascertain the real facts of the case it is very much necessary to appoint taluka surveyor as court commissioner to ascertain whether the suit schedule property exist or not. If the application is allowed no prejudice will be caused to

the other side. On these grounds the Plaintiffs prayed to allow the application.

3. On the other side, the defendants have filed objections to this application, wherein they have contended that the application is not maintainable in law or on facts. That the application filed by the plaintiffs is frivolous. That this application has been filed to drag on the proceedings. That the evidence as already commenced and the plaintiffs already tender his evidence that the application is frivolous, vexatious in nature and on these grounds the plaintiffs prays to reject the application.

4. Heard both the counsels and perused available materials on the record.

5. Upon hearing the arguments and on perusal of the materials on the record the following point arise for my consideration.

POINTS:

1. Whether the application filed by the plaintiffs U/o 26 rule 9 r/w Sec.151 of CPC deserves to be allowed.
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.I:** I have Perused the contents of the application and objections filed by the respective parties, wherein it is contended that there is 9 feet road existed towards Gollarahatti to Bijjihally which is being used by the plaintiffs and villagers. The defendants are trying to encroach the above said road without having any rights. The defendants having their property towards Western side of the above said road. By taking advantage of this, they are trying to obstruct the plaintiffs peaceful possession and enjoyment of the above said road. That the defendants have tried to close the same and is disputing its existence and for these reasons the appointment of commissioner is necessary to ascertain the existence of road.

8. The dispute between the parties is with respect to the existence of road towards defendants property. The Plaintiffs have sought for appointment of court commissioner to identify the existence of road. The purpose of appointing court commissioner is not for collecting evidence. But to assist the court to decide real controversy between parties. In this case to ascertain the existence of road. It is very

much necessary to appoint court commissioner. Therefore, I am of the opinion that. if this court appoints court commissioner both parties will benefit by the outcome of court commissioner's report and the report will aid the court to find the real controversy between the parties. Hence I answer Point No.1 **in the Affirmative.**

9. **POINT No.2:** For the aforesaid reasons, I proceed to pass following :

ORDER

Interim Application filed by the Plaintiffs under Order XXVI Rule 9 r/w Sec.151 of CPC., is hereby allowed.

The Taluk Surveyor of Sira is hereby appointed as the court commissioner to ascertain the alleged 9 feet road existed in the land of defendants and submit the report with regard to the actual position of the suit schedule property.

The court commissioner fee is fixed at Rs.2,500/-.

Both parties at liberty to file memo of instructions.

**Sd/-
Prl. Civil Judge & JMFC.,
Sira.**