

KAUK030011322020



**IN THE COURT OF THE PRL CIVIL JUDGE AND JMFC-II,
AT KARWAR.**

**PRESENT: Sri. Anil John Sequeira
B.B.A., LL.B.,
Prl. Civil Judge & JMFC-II
Karwar.**

Dated this 09th day of July, 2026

O.S. No.183/2020

Plaintiff/s :

Smt. Bhavana Nitin Patil
Aged: 60 years, Occ: Housewife,
R/o. Aligadha Baithkol, Karwar.
Dist: Uttara Kannada.

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

V/s

Defendant/s :

Smt. Vijaya Ramkrishna Babrekar
W/o. Ramkrishna Babrekar
Aged: 70 years, Occ: Housewife,
R/o: Binaga, Karwar,
Dist: Uttara Kannada.

(By Sri. G.T.N, Advocate)

PARTIES TO I.A.No – III

Plaintiff/s : Smt. Bhavana Nitin Patil
Appellant : Aged: 60 years, Occ: Housewife,
R/o: Aligadha Baithkol, Karwar.
Dist: Uttara Kannada.

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

V/s

Defendant/s : Smt. Vijaya Ramkrishna Babrekar
Opponent : W/o. Ramkrishna Babrekar
Aged: 70 years, Occ: Housewife,
R/o: Binaga, Karwar,
Dist: Uttara Kannada.

(By Sri. G.T.N, Advocate)

ORDERS ON I.A. No. III

The plaintiff has filed this application under order XXVI Rule 9 Read with Section 151 of C.P.C., with a prayer to appoint Taluka Surveyor as court commissioner for ascertaining whether defendant have encroached upon the plaintiff land and have constructed any buildings/House upon Survey No.283/1B2, Baithkol, Taluka Karwar in Area of 00-04-00 and submit the report before the court.

2. I.A.No.III is supported by an affidavit of the plaintiff, wherein he has deposed that he is in peaceful possession of the suit schedule property and that the defendant is trying to construct a house in the suit schedule property. The plaintiff further submits that the defendant has encroached upon the southern side of the suit land. The present application is filed seeking appointment of a Surveyor as Court Commissioner to measure the suit land and to report before this Hon'ble Court as to whether there is any encroachment.

3. The appointment of a Commissioner is essential for local inspection and for proper adjudication of the matter in dispute. Hence, the plaintiff prays before this Court to appoint the Taluka Surveyor, Karwar, as Court Commissioner to visit the spot, investigate the matter, and submit a report. With these contentions, the plaintiff prays to allow the application.

4. On the other hand the learned counsel for the defendant contends that IA No.III is filed in a malicious intention. The plaintiff has suppressed the truth and the plaintiff is trying

to collect the evidence. With these contentions, the defendant prays before this court to reject the application.

5. Heard on I.A. No. III.

6. The following points would arise for consideration:

1. Whether the application filed by applicant/plaintiff under Order XXVI Rule 9 Read with Section 151 of C.P.C, is deserves to be allowed?
2. What order?

7. Based on the contents of the present application and objection raised by the plaintiff and also materials on hand, the aforementioned points are answered as under:

Point No.1 : **Affirmative**

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

:-REASONS:-

8. Point No. 1 :- The plaintiff has filed the present suit against the defendant for the relief of permanent injunction with regard to suit schedule property.

9. The learned counsel for the plaintiff submits that, the

appointment of survey Commissioner is very essential to adjudicate the matter on merits. Therefore, it is necessary to bring the actual picture of the said suit schedule property before the Court. He further submits that if the application is allowed no harm will be caused other side, if the application is not allowed then the defendant will be put great hardship and injustice. Hence, prays to allow the application. On the other hand the learned counsel for the defendant has filed the objection contending that the plaintiff has filed this application with malafide intention.

10. At this juncture its relevant to refer the Judgment of Hon'ble high court of Karnataka in **Sri Shadaksharappa V/s Kumari Vijayalaxmi & Others, 2023(1) KCCR 637.**

11. In Sri Shadaksharappa V/s Kumari Vijayalaxmi & Others, 2023(1) KCCR 637 Wherein Hon'ble High Court of Karnataka held that,

“B. CIVIL PROCEDURE CODE, 1908-Order 26, Rule 10-Appointment of Commission-When impermissible?

The Court stated that, “Under the provisions applicable for local inspection, what is impermissible is the delegation of adjudicating power.

To cite an example, if both parties claim to be in possession of the dispute property, the local inspection by the Commissioner cannot be ordered to ascertain the possession. The question of possession is to be decided by the Court. **However, if one party alleges encroachment be another and another party denies such allegation, the Commissioner can be appointed to ascertain whether there is encroachment or not.** In such a situation the Commissioner is appointed to find out the nature of possession. **The report based on local inspection will be a handy tool to decide the case relating to encroachment.** In the case on hand, the petitioner to prove his assertion of encroachment instead of leading oral evidence of witnesses has applied for local inspection and the same is not only permissible but also desirable.”

12. This court has perused the above decision. In this case, to check whether the alleged encroachment is situated in the suit property or not, appointment of survey commissioner is very much necessary. Without the assistance of the report of the survey commissioner, this Court cannot presume about the existence of the situation as alleged in the pleadings. Therefore,

the principles laid down in the above cited judgment are helpful to appoint a commissioner in order to ascertain the actual picture of the suit property.

13. From going through above discussion, circumstances and materials on the hand, this court has come to conclusion that the application filed by the defendant is deserved to be allowed. Hence, the point No.1 is answered in the **Affirmative.**

14. Point No. 2:- For the reasons discussed above, this court proceeds to pass the following;

ORDER

I.A.No.III filed by the plaintiff/applicant under Order XXVI Rule 9 of C.P.C, is hereby allowed.

The Taluka Surveyor, Karwar is appointed as the court commissioner.

The Court Commissioner's fee for that purpose is tentatively fixed at Rs.2,000/-.

Plaintiff is hereby directed to deposit the commissioner fee and the plaintiff and defendant are directed to file memo of instructions.

Office is hereby directed to issue commissioner warrant after fixed fee deposited by the defendant.

Call on :

(Directly dictated to the Laptop, corrected and then pronounced by me in the open court on this 9th day of July 2026).

Sd/-
(Anil John Sequeira)
Prl. Civil Judge & J.M.F.C.-II
Karwar.