

**ORDERS ON APPLICATION UNDER ORDER XXVI RULE 9
R/W. SEC.151 OF C.P.C.**

I	Provision under which the application is filed	U/o XXVI Rule 9 R/w Sec.151 of C.P.C
II	Relief sought for	Appointment of court commissioner
III	The date on which the application filed.	21.01.2025
IV	Number of application.	I.A.No.VII
V	The date on which the objection filed by opponent.	29-01-2025
VI	The date of which the order passed on the application.	22-03-2025

The counsel for defendant has filed this application for appointment of Taluka surveyor Bhatkal as court commissioner to visit the suit land and to carry out below mentioned work i.e.,

1. To measure the suit land bearing Sy. No.7A hissa 14 measuring 0-6-0 (A.G.A) of Mavalli-II Village, Bhatkal Taluka and to fix the boundary.

2. To show that is there any building in suit survey Number 7A hissa 14 measuring 0-6-0 of Mavalli-II Village, Bhatkal Taluka and to measure the length and width of such building if any.

3. To measure the land bearing Sy.No.7B measuring 0-7-8 (A.G.A) of

Mavalli-II Village, Bhatkal Taluka and to fix the boundary.

4.To measure the land bearing Sy.No.7B measuring 0-7-8 (A.G.A) paiki 0-2-12of Mavalli-II Village, Bhatkal Taluka and to fix the boundry.

5. To show the building situated in Sy.No.7B measuring 0-7-8 of Mavalli-II Village, Bhatkal Taluka.

6. To show that the land bearing Sy. No.7B of Mavalli-II Village, is attached to Murdeshwar -Basti Road or not.

7. And to do such other works which may be assigned to the commissioner at the time of executing the commission work during the visit of the suit land.

2. The defendant has filed affidavit annexed to the application and stated that, the tenant under Mohammed Saleem S/O Mohammed Jifri Haji Fakki, who is the owner of the land bearing Sy.No.7B measuring 0-7-8 paiki 0-2-12 of Mavalli-II Village, Bhatkal Taluka, wherein who has constructed shopping complex facing towards Murdeshwar Basti Road. In the said building, he is the tenant under the said owner. Further, plaintiff claims that they have purchased the land bearing Sy. No.7A measuring 0-6-0

of Mavalli-II Village, Bhatkal Taluka. The said land is vacant which is situated behind the back of Sy.No.7B of Mavalli-II Village, Bhatkal taluka. He is not tenant under the plaintiff, so there is no relationship of landlord and tenant between me and plaintiff. The plaintiff claims that the suit shop premises is situated in Sy. No.7A hissa 14 of Mavalli-II Village, Bhatkal Taluka. Further stated that, already evidence of plaintiff and defendant are over, so it is the right time to appoint Taluka Surveyar, Bhatkal as court commissioner to measure the suit land and the land bearing Sy.No.7B measuring 0-7-8 paiki 0-2-12 of Mavalli-II Village, Bhatkal Taluka and to note the entire building situated in Sy. No.7B of Mavalli-II Village, Bhatkal Taluka so as to ascertain the actual facts.

3. Further, contended that, it is very much necessary to survey the suit property in their presence so as to fix the boundry of the suit land and adjacent land bearing Sy. No.7B of Mavalli-II Village, Bhatkal Taluka, If the suit land is surveyed the actual boundary can be ascertain so as to meat the ends of justice. Hence he prays to this court may be pleased to appoint Taluka Surveyor, Bhatkal as court commissioner to execute the work mentioned in the I.A. If the I.A is allowed no harm will be caused to the

other side. The report of court commissioner will assist the court to decide the matter in dispute. Hence prays to allow application.

4. On the other hand the plaintiff has filed objection and contended that, the application is false frivolous and unsustainable in law and on merits of the case. The application is filed with a malafide intention to drag the proceedings. The issues arose between the parties do not warrant for appointment of Taluk surveyor as the Court Commissioner in the above case. There is no issue before the Court regarding the identity of the suit premises/schedule property. The issues before the Court are whether the plaintiff proves that he is the owner of the suit schedule premise and the defendant is the tenant under the plaintiff in respect of the suit schedule premises. The burden of proving these two issues is upon the plaintiff. These two issues do not warrant for appointment of the Court Commissioner. Further there is no issue before the Court regarding the identity or location of the suit schedule premises. The present application is filed against the principles of law. The defendant being the tenant under the plaintiff cannot dispute the title of the land lord/plaintiff.

5. No reasons are made out in the application and in the affidavit for appoint Court commissioner

and same is amounting to collection of evidence. The defendant did not place any piece of document to prove before this court that, the suit premises is situated in the alleged Serial No. 7B measuring 00-07-08 (A.G.A) out of which 00-02-12 (A.G.A). If really the suit schedule premises is situated in the said survey number, naturally, the ample of documents available in revenue and Panchayath authority and the defendant could easily get the same to prove his case. Hence the appointment of the Court Commissioner is nothing but fishing expedition and thereby to collect evidence. The defendant has admitted that the plaintiff is the owner of the suit schedule premises. The plaintiff has produced ample of documents relating to the suit schedule premises and the property and they reveal that the plaintiff is the owner of the suit schedule premises and shows that the suit schedule premises is situated in S. No. 7A hissa 14. Further the property in which the suit schedule premises is situated is a non agricultural land. The authority has prepared the layout sketch and E-property. The plaintiff has produced the same before the Court. The said unchallenged documents clearly disclose the location of the suit schedule premises. Hence the identity of the property cannot be disputed by the defendant, by making bald allegation in the written

statement. Moreover, the defendant has claimed that the defendant is the tenant in respect of the suit schedule premises under one Haji Mohammed Saleem. The said owner himself sold the schedule premises to the plaintiff. The earlier owner never challenged the identity and location of the suit schedule premises and the property in which the suit schedule premises situated. Hence the defendant is estopped from disputing the identity of the suit schedule premises or the property in which it situated.

6. The suit premises is situate in S. No. 7A hissa 14 measuring 00-06-00 of NA land of Mavalli-2 Village and for which the plaintiff is the absolute owner and he purchased the said property and the buildings therein, including the suit schedule premises from its earlier owner Haji Mohammed Saleem, through whom the defendant is also claiming tenancy. Hence the defendant cannot dispute the identity of the suit schedule premises. The application is filed just to collect evidence. All other averments in the application and in the affidavit are stoutly denied by the defendant as false. The present applications is filed just to drag the proceedings. Hence prays to dismiss the application.

7. Heard both side arguments, perused the materials available on record.

8. In view of above the following points that would arise for my consideration is as below:-

1. Whether the defendant has made grounds to allow the application?
If so,
2. What order?

9. My answers to the above points is as follows:-

Point No.1	:	In the Negative
Point No.2	:	As per final order for the following:-

REASONS

10. **Point No.1**: The plaintiff has filed this suit for eviction against the defendant with respect to the schedule property. This application is filed at the stage of final arguments.

11. The learned counsel for the defendant has argued that, the suit premise is situated in the Survey No. 7/B of Mavalli-II Village of Bhatkal Taluk. The plaintiff society has purchased land bearing Survey No. 7/A/14 measuring 00-06-00 of Mavalli-II village, Bhatkal Taluk and there is no building in the said survey number. The plaintiff society has created the documents in collusion with revenue department. Further, argued that, the defendant is the tenant under one Mohmmmed Saleem S/o Mohammed Jifri Haji Fakki and not under the plaintiff. In the present suit,

the defendant has seriously disputed regarding the identification of the suit property, hence, the Taluka Surveyor has to be appointed to ascertain in which survey number the schedule premise is situated and the report of the commissioner help the court to decide the suit and prays to allow the application. Further, the defendant counsel has relied the following decisions:

- 1) ILR 2010 KAR 897
- 2) 2015(5) KCCR 1477
- 3) 2021(2) KCCR 1741

12. On the other hand the learned counsel for the plaintiff has argued that, this suit is filed for the relief of eviction against the defendant, hence the appointment of the court commissioner does not warranted. The description of the schedule premise is clearly stated in the plaint and there is no ambiguity. In the Ex.P4 i.e., the form No.9 clearly shows that, the schedule premise is situated in the survey number 7/A/14 of Mavalli-II Village. The defendant has not produced any document to show that, the schedule premise is situated in Survey No. 7B of Mavalli-II Village. Further, argued that, the defendant has clearly admitted the identity of the suit premise in the cross-examination. Hence, prays to dismiss the

application. In support of the argument, the learned counsel for the plaintiff has relied following decisions:

- 1) Writ Petition No.2971/222
- 2) 2002(4) KCCR 1424
- 3)2018(3) KCCR SN 267
- 4) 2010(5) KCCR 4300

13. In the present suit, the defendant has taken the contention that, the suit schedule premise is not situated in the survey number 7/A/14 of Mavalli-II Village, Bhatkal and also stated that, the suit premise is situated in the survey number 7B of Mavalli-II Village, Bhatkal Taluk and prays to appoint Taluka Surveyor as Court commissioner to to conduct local inspection with regard to the identification of the property as stated in the application herein above.

14. It is to be noted here that, the court has discretionary power to appoint the commissioner for local inspection, if the materials available on record are not sufficient to adjudicate the dispute between the parties. In the present suit, the both parties have lead their evidence and produced documents. Further, there is no dispute regarding the purchase of land bearing survey No.7/A/14 measuring 00-06-00 of Mavalli-II Village, Bhatkal Taluk by the plaintiff society. On perusal of Ex.P5 sale deed and Ex.P4 i.e.,

the form No.9 relating to the survey No.7/A/14 of Mavalli-II Village, Bhatkal, this court can ascertain the identity of the suit schedule property. When the plaintiff has given specific boundaries to the suit schedule property in the plaint, then there is no necessary to fix the boundaries to the suit schedule property. Further, there is no issue with regard to fixing of boundaries to the suit schedule property or measurement or identification of the suit schedule property is concerned. This court could lay its hand on the decision of the Hon'ble High Court of Karnataka reported in 2015(5) KCCR Page No.1575, between Mohammed Hussian V/s Ramakrishna and another. Wherein it is held that, if the court feels that on the basis of the evidence adduced, if it is difficult to reach correct conclusion, the court has discretionary power to appoint court commissioner for making local inspection. The scope of this suit is with respect to the landlord tenant relationship between the plaintiff and the defendant and not about the measurement of the property. Hence without discussing merits of the case, the materials available on record are sufficient to adjudicate the dispute between the parties. Perused, the decisions relied by the defendant counsel, but same are not helpful to the defendant for the reasons discussed above. Therefore, by considering the facts

and circumstances of the case, I proceed to answer point No.1 in the **Negative**.

15. **Point No.2** : For the above discussed reasons, I proceed to pass following:

ORDER

The application filed U/o 26 rule 9 R/w Section 151 of CPC by the defendant is hereby rejected.

No order as to costs.

It is made clear that whatever discussion made by this court that opinion found are only for the purpose of disposal of this application and they are on the basis of the materials on the record. Therefore, the parties shall not take the benefit from said observations during the final disposal of this case.

For argument call on 04.04.2025.

Sd/-

Addl.Civil Judge and JMFC.,
Bhatkal.