

KAUK510001662014



Presented on : 17-02-2014

Registered on : 17-02-2014

Decided on : 22-08-2025

IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL
AT: HALIYAL, UTTARA KANNADA

Dated this 22nd day of August, 2025

PRESENT

Smt. Geeta. B.A.LL.B (Hon's) LL.M.,
Civil Judge and JMFC, Haliyal

FDP NO.2/2014

BETWEEN:

Shri. Hanumanth Gangappa Javalkar
deceased by his LRs.

1(a). Shri. Mahabaleshwar Hanumanth Javalkar,
Age: 50 years, Occ: Agriculture and others.

.....**Petitioners**

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

AND:

1. Shri. Kedari Gangappa Javalkar,
deceased by his LRs.,

1(a). Shri. Parashuram Kedari Javalkar,
Age: 69 years, Occ: Agriculture and others.

....**Respondents**

**(R-1(a) to (e), (g) & (h), R-1(e)(i) to 1(e)(vii) By
Sri. M.B.P, Adv.,)**

**(R-2(b), 2(c), 2(d), 3(a), 3(b), 3(d)(i), 3(d)(ii) By
Sri. G.G.G., Adv.,)**

I.A.No.20**Applicant/R-2(d): Santosh Somaning Javalkar****-Vs.-****Opponent/Pets : Hanumanth S/o Gangappa Javalkar
since dead by his LRs
Shri. Mahabaleshwar S/o
Hanumanth Javalkar and others.****ORDER ON I.A NO.20**

The respondent no.2(b), 2(c), 2(d), 3(a), 3(b), 3(d)(ii) have filed I.A No.20 under Section 151 of C.P.C., praying to accord permission for respondents to cross-examine the Court Commissioner who has submitted commissioner report in respect of properties bearing Block No.27/2, Block No.24 of Chatranal Village, property bearing Block No.139/7 of Guttigeri Village, property bearing Block No.81 of Hullatti Village, property bearing Block No.97 of Haliyal and for any other relief to meet the ends of justice and equity.

2. In the affidavit, the respondent no.2(d) stated that, the Commissioner has submitted the Panchanama in respect of properties bearing Block No.27/2, Block No.24 of Chatranal Village, property bearing Block No.139/7 of Guttigeri Village, property bearing Block No.81 of Hullatti Village, property bearing Block No.97 of Haliyal. In the Panchanama, the Commissioner has taken the signatures and the facts stated are attached manipulating, as such, the commissioner work is not done in accordance with law. Hence, the Commissioner needs to clarify the matter. Therefore, he needs to be cross-examined. The Court Commissioner has already submitted report without following due

procedure as contemplated in law and also without issuing notice to all co-owners. The Commissioner report has been submitted without showing the road to ingress and egress of the subject matter, as such, the Court Commissioner has prepared report in collusion with petitioners to have wrongful gain to them, as such, to uphold the dignity of law and extract the truth from the Commissioner to adjudicate the matter in fair manner, this application is required to be allowed. With these contentions, the respondents prayed to allow the application.

3. The respondent no.1(a) to (h) have filed objections to I.A No.20 praying to permit them to cross-examine the Court Commissioner stating that, the commission work is done when the father of the respondent no.1(c)(i) to 1(c)(iv) was alive and looking to the commission work and issuance of notice to the commission work, it can be seen that, the commissioner colluding with petitioners in favour of petitioners has been submitted report. The respondents have raised many queries in their objections to main petition in respect of conduct of commission work and allotment of shares to the parties to the proceedings. In some properties, the Commissioner has not shown proper road connecting ways to the main road. The Commissioner has not shown the properties which are sold by the respondents who are in possession from the beginning. The work of commissioner needs many explanation and clarification for proper understanding and allotment of shares and therefore, it is just and necessary to call the Court Commissioner for the evidence. With these contentions, the respondent No.1(a) to 1(h) prayed to allow I.A No.20.

4. The petitioners have filed objections to I.A No.20 stating that, the respondent's application is time barred and not maintainable in law. The application filed by the respondents is an afterthought process just to protract and delay the proceedings which is bad in law. The objections of main petition was filed after 9 years i.e., on 16.03.2023. Further, after filing of main petition, the matter was posted for objections to Court Commissioner report. After much time, the respondents have filed their detailed objections to the Commissioner report on 13.07.2023. Thereafter, the matter was posted for arguments on Commissioner Report. All the respondents were given sufficient time and opportunity to put their side. After much deliberations and arguments, Court accepted the Commissioner report on 07.03.2024 rejecting all contentions raised by the respondents stating that, the Commissioner report is in accordance with law. Now the petitioners moved an application for appointment of Commissioner to carry out survey of residential properties and after filing objections, the matter was posted for hearing and thereafter, the respondent no.1(c) died and his LRs brought on record. It is stated that, from the date of acceptance of Commissioner report in respect of agricultural lands till today, the respondents coming around and have filed this application which is an after thought process just to harass the petitioners. The respondents had an opportunity to call of Commissioner while filing objections but, they slept over the matter and they did not make any efforts to examine the Court Commissioner. The contentions of them were clarified before the Court and after full satisfaction, the Court has passed

orders. Further, the reasons stated in the affidavit are not justifiable and reasonable grounds to allow the application. Hence, the application is deserves to be dismissed. The Court Commissioner report has been accepted by this Court in full and respondents do not find a chance to call for evidence of the Commissioner before the Court. Further, Court cannot sit on its judgment and decide the matter. Further, this application is filed after a period of one year to cause hurdles in justice delivery. With these contentions, the petitioners prayed to reject the application.

5. Heard the counsel for respondent no.2(b), 2(c), 2(d), 3(a), 3(b), 3(d)(ii) and respondent no.1(a) to 1(b) and also counsel for the petitioners.

6. Now the points that would arise for my consideration are as follows;

1. **Whether respondent no.2(b), 2(c), 2(d), 3(a), 3(b), 3(d)(ii) have made out grounds to allow the application and call of Court Commissioner for evidence ?**
2. **What order?**

7. Answers on the above points are as under;

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

REASONS

8. **POINT NO.1:-** The respondent no.2(b), 2(c), 2(d), 3(a), 3(b), 3(d)(ii) have filed this application praying to permit them to

cross-examine Court Commissioner on Commissioner report with respect to landed properties i.e., Block No.27/2, Block No.24 of Chatranal Village, property bearing Block No.139/7 of Guttigeri Village, property bearing Block No.81 of Hullatti Village, property bearing Block No.97 of Haliyal and for other relief. The respondent no.1(a) to 1(h) supported the application, though he is filed his contentions in the way of objections. The petitioners strongly objected to the application contending that, after considering the objections raised by the respondents, the Court Commissioner report was accepted by the Court therefore, Court Commissioner cannot be called for.

9. Perused entire records, the Court Commissioner report dated 13.01.2015 in respect of agricultural lands was accepted on 07.03.2024 stating that, the said report is in accordance with preliminary decree passed in O.S No.97/1982. Thereafter, these respondents have filed this application praying to permit them to cross-examine the Court Commissioner stating that, the Court Commissioner has submitted report by manipulation and has taken signatures to the panchanama. The respondents have not stated who has manipulated the report and how manipulation has been taken place. The respondents further contended that, without issuing notice to all the co-owners, the Commissioner report has been submitted without showing road to ingress and egress. The respondents have taken same contentions in the objections filed to Court Commissioner report, after considering all the objections raised by the respondents, the Court Commissioner

report has been accepted by this Court. Therefore, the contentions of respondents hold no water.

10. Further, on perusal of entire records, the respondents continuously delayed the proceedings of this petition. The court commissioner submitted his report on 13.01.2015. Thereafter, inspite of sufficient time respondents have not filed objection to Commissioner report hence, their objection taken as not filed. On 13.0.2023, the counsel for respondent no. 2d, 3a, b, d filed I.A.No.10 seeking permission to file objections to court commissioner report, said application was allowed on 17.09.2023 with costs of Rs.1,000/-. On 31.08.2023 counsel for respondent no.1(a to h) filed the I.A.No.11 seeking permission to file objections to court commissioner report, said application was allowed on 12.10.2023 with costs of Rs.1,000/-. On 09.11.2023, the counsel for petitioner submitted his arguments on Commissioner report, inspite of sufficient opportunity, respondents have not submitted their arguments on Commissioner report, therefore their argument on Commissioner report taken as nil. Thereafter, they sought permission to argue on Commissioner report by filing I.A.No.12 and 13, said application were allowed by the court. After considering objections of respondent no.2d, 3(a, b,d) and respondent no.1(a to h) and after hearing them, the Court Commissioner report has been accepted by this Court. Therefore, the contentions of respondents that, the Court Commissioner report is manipulated document and not in accordance with law cannot be accepted. Further, this Court has already accepted the Commissioner report. Under these

circumstances, it cannot sit on its own order and permit the respondents to cross-examine the Court Commissioner. Once an order has been passed by the Court, it cannot sit on its own order and change the same. Therefore, the respondents have not made out grounds to allow the application. Further, on perusal of records, conduct of the respondents shows that they are purposely delaying the proceedings. This type of attitude has to be curbed by the Court in the interest of justice and to prevent the abuse the process of law. Therefore, considering the records, the respondents have not made out grounds to permit them to cross-examine the Court Commissioner on his report. Hence, **I answer Point No.1 in the Negative.**

11. POINT NO.2 :- In view of the discussion on Point No.1 and for the reasons stated therein, I proceed to pass the following:

ORDER

**I.A No.20 filed by the respondent
no.2(b), 2(c), 2(d), 3(a), 3(b), 3(d)(ii)
under Section 151 of C.P.C., is hereby
rejected on cost of Rs.5,000/-.**

(Dictated to the Stenographer, transcribed and typed by her, corrected by me, signed & then pronounced in the Open Court on this the **22nd day of August, 2025**)

Sd/-
(Geeta)
Civil Judge & JMFC.,
Haliyal