

KAUK510020562021



Presented on : 23-09-2021
Registered on : 23-09-2021
Decided on : 06-08-2025

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

Dated this 6th day of August, 2025

PRESENT

Smt. Geeta. B.A.LLB (Hons) LL.M.,
Civil Judge and JMFC, Haliyal

ORIGINAL SUIT NO: 95/2021

BETWEEN:

1. Shri. Basavaraj S/o Nagappa Gokavi,
Age: 70 years, Occ: Tailor,
R/o. Channabasaveshwar Galli, Haliyal,
Tq: Haliyal, Dist: Uttar Kannada.

.....Plaintiff

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

AND:

1. Kumari. Chaitra D/o Iranna Hubballi,
Age: 13 years, Occ: Student,
since minor represented by her
natural father and guardian

Shri. Iranna S/o Mallikarjun Hubballi,
Age: 39 years, Occ: Business,
R/o. Channabasaveshwar Galli, Haliyal,
Tq: Haliyal, Dist: Uttar Kannada.

...Defendant

(By Sri. P.B.A, Advocate)

I.A.No.IV

**Applicant/Plaintiff : Shri. Basavaraj S/o Nagappa
Gokavi**

-Vs.-

**Opponent/Defendant:Kumari. Chaitra D/o Iranna
Hubballi**

ORDERS ON I.A.NO.IV

The plaintiff filed I.A.No.IV under order 26 Rule 13 R/w Sections 54 and 151 of C.P.C praying to appoint City Surveyor as Court Commissioner to make the measurement of encroached property of the plaintiff in the interest of justice and equity.

2. In the affidavit plaintiff stated that, he is the owner in possession of the suit property bearing CTS No.1796 measuring 7.68 Sq. Mtrs., 1799/7 measuring

166.54 Sq. Mtrs., and 1799/6 measuring 7 Sq. Mtrs., situated at Channabasaveshwar Galli, Haliyal and said properties are his ancestral properties and the defendant is adjacent owner of CTS No.1794 and 1795. The defendant started construction of his house and encroached western side 6 inch in width and more than 100 feet in length, in spite of request, the defendant not heeded and continued construction by erecting wall without leaving setback. The defendant also violated the terms and conditions of building permission issued by the Town Municipality Authority, Haliyal. The defendant has already constructed the wall by encroaching suit property. Therefore, it is necessary to measure the property of the plaintiff and defendant and also encroached area. Hence, it is necessary to appoint City Surveyor, Haliyal as Court Commissioner to measure the property of the plaintiff and defendant and also encroached portion and submit report. It is stated that, the evidence of parties is completed and case is posted for arguments. Hence, it is very much necessary to appoint Court Commissioner to know the encroachment in the suit property. If the application is not allowed, the plaintiff will be put to irreparable loss and hardship. On the contrary, if the application is allowed, no loss or

hardship will be caused to the plaintiff. With these contentions, the plaintiff prayed to allow the application.

3. The defendant filed objections to I.A No.IV contending that, the application is not maintainable, the plaintiff filed this suit with respect to CTS No.1796, 1798/1, 1799/7 and 1798/1, said properties are not adjoining to CTS No.1794 and 1795 which belong to defendant. The plaintiff has examined himself as PW.1 and closed his evidence now came up with this application which is not maintainable. The plaintiff knowing well that, the suit is not tenable in the present form has come up with the instant application which amounts to reopening of the case and collecting further evidence which is not permissible. The plaintiff has led oral and documentary evidence to prove the case but now filed this application seeking for appointment of Court Commissioner which amounts to collection of evidence which is not permissible. Further, the PW.1 in his cross-examination stated that, "ನನ್ನ ಮತ್ತು ನನ್ನ ಸಹೋದರಿಯರ ನಡುವೆ ವಾಂಟಣೆ ಆದಾಗ ಸರ್ವೆ ಮಾಡಿಸಿ ಸದರಿ ಶೌಚಾಲಯ ಕಟ್ಟಿಕೊಂಡಿದ್ದೇನೆ." But, the plaintiff has not submitted any records regarding the same. The defendant has

admitted the CTS map at Ex.D1. The plaintiff also not examined his brothers, sisters or independent witnesses to substantiate his claim. Therefore, looking form any angle, the application is not maintainable. With these contentions, the defendant prayed to reject the application.

4. Heard both counsels and perused the records.

5. Now, the points that arise for consideration are as under;

1. Whether plaintiff has made out grounds to allow the application?

2. What order?

6. Answers on the above points are as under;

Point No.1 : In the Affirmative

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

REASONS

7. **Point No.1:-** The plaintiff filed this suit for the relief of declaration, permanent and mandatory injunction and now, the case is at the stage of

arguments and the plaintiff filed this application to appoint the City Surveyor as Court Commissioner to measure the suit property and defendant property and also encroachment in the suit property and submit report regarding the same. The defendant objected to the application contending that, the plaintiff has to prove his contentions by oral and documentary evidence, the plaintiff in order to collect the evidence has filed this application which is not permissible under law.

8. On perusal of entire records, the plaintiff has specifically pleaded in the plaint that, he is the owner in possession of suit property and the defendant is an adjoining owner of property bearing CTS No.1794 and 1795 which are adjacent to suit properties and now, the defendant is constructing house, at that time, encroached 6 inch width and more than 100 feet in length towards western side of plaintiff's property. The defendant in the written statement specifically denied the encroachment and in the objections the defendant stated that, the suit property and property of defendant i.e.,1794 and 1795 are not adjoining to each other. Therefore, question of encroachment does not arise. On perusal of pleadings, there is specific contention

regarding the encroachment of the property. In the circumstances, in order to know the extent of encroachment, the Court Commissioner has to be appointed. In the judgment reported in ***Shri. Shadaksharappa vs. Kumari Vijayalakshmi and others, ILR 2023 KAR 3983***, the Hon'ble High Court of Karnataka held that, if one party alleges encroachment by 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. The Hon'ble court also held that provision is not 'stage' centric. Thus the provision can be invoked either before or after. If the application is filed before the commencement of the trial, the court having regard to the pleadings and records may allow such application before the commencement of trial.

9. Therefore, when there is specific contention regarding encroachment, Court Commissioner has to be appointed to know the extent of encroachment by the parties. Further, in the case on hand, the evidence of

both parties is completed and matter is posted for arguments. At this stage, if the Court Commissioner is appointed to measure the extent of encroachment in the suit property, it will not amount to collection of evidence. Further, this Court while passing an order on I.A No.III has given liberty to the plaintiff to file application to appoint Court Commissioner after completion of evidence of both parties. At present, the evidence of both parties is completed, in such event, if the Court Commissioner is appointed to measure the suit property and property of defendant and also measure the encroachment if any in the suit property, the report of the Court Commissioner will assist the Court to arrive at proper conclusion. Therefore, the application filed by the plaintiff has to be allowed in the interest of justice. **Hence, I answer Point No.1 in the Affirmative.**

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

ORDER

**I.A. No.IV filed by plaintiff
under Order 26 Rule 13 R/w
Sections 54 and 151 of C.P.C.,/**

**under Order 26 Rule 9 of C.P.C.,
is hereby allowed.**

**The City Surveyor is
appointed as Court
Commissioner to measure the
suit properties and property of
defendant i.e., CTS No.1794 and
1795 and also report
encroachment if any, in the suit
properties. If there is an
encroachment, report the extent
of encroachment by the
defendant.**

**The court commissioner fee
is fixed Rs.3,000/-.**

**To file memo of instructions
by the parties.**

Call on 16.08.2025.

*(Dictated to the Stenographer directly on computer, corrected and then
pronounced by me in the open Court on **06th day of August, 2025**).*

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