

KAUK510021872021



Presented on : 24-11-2021  
Registered on : 24-11-2021  
Decided on : 06-02-2026

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

**Dated this 6<sup>th</sup> day of February, 2026**

**PRESENT**

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

**ORIGINAL SUIT NO: 112/2021**

**BETWEEN:**

1. Shri. Shankar S/o Masanu Tamburkar,  
Age: 62 years, Occ: Agriculture,  
R/o. B. K Halli (Bujarkanchanahalli)  
Tq: Haliyal, Dist: Karwar.

**.....Plaintiff**

**(By Sri. M.N.J., Advocate)**

**AND:**

1. Shri. Suresh S/o Mahadev Daivajnya @ Sonar,  
Age: 54 years, Occ: Agriculture,  
R/o. B. K Halli (Bujarkanchanahalli)  
Tq: Haliyal, Dist: Karwar.

**...Defendant**

**(By Sri. S.S.K, Advocate)**

**I.A.No.X**

**Applicant/Deft : Shri. Suresh S/o Mahadev Daivajnya @  
Sonar,**

-Vs.-

**Opponent/Plff : Shri. Shankar S/o Masanu Tamburkar,**

**ORDERS ON I.A.NO.X**

The defendant filed I.A.No.X under Order 26 Rule 9 of C.P.C., praying to appoint ADLR, Haliyal as Court Commissioner to measure the suit property and fix the boundaries and submit report, in the interest of justice.

2. In the affidavit, the defendant stated that, his property is situated abutting to suit property and he constructed shed in his land. However, the plaintiff is contending that, shed is situated within the suit property. Therefore, it is proper to appoint surveyor as Court Commissioner to fix boundaries of suit property and defendant's property. If the application is allowed, no loss or hardship will be caused to the other side. On the contrary, he will be put to loss. With these contentions, defendant prayed to allow the application.

**3.** The plaintiff filed objections to I.A No.X contending that, the defendant filed false and frivolous application and grounds stated in the accompanying affidavit are false. There are no grounds to appoint Court Commissioner to measure the suit property and demarcate its boundaries. If the Court Commissioner is appointed it amounts to collection of evidence. The plaintiff has already produced Photos, Map issued by Surveyor which are already marked. Therefore, appointment of Court Commissioner does not arise.

**4.** The Court Commissioner cannot be appointed for collection of evidence and to fulfill lacunas. The parties are bound to prove their case. Therefore, at this stage of argument, Court Commissioner cannot be appointed. In order to drag on the matter and harass the plaintiff, false application is filed. With these contentions, the plaintiff prayed to dismiss the application.

**5.** Heard both counsels and perused the records.

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

**1. Whether defendant has made out grounds to appoint ADLR, Haliyal as Court Commissioner to measure the suit property and fix boundaries?**

**2. What order?**

7. 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**

8. **Point No.1:-** The plaintiff filed this suit for the relief of permanent injunction stating that, he is absolute owner of suit property and the defendant without having any right, title or interest over the suit property has created forged and fabricated documents and got entered his name in respect of 3 gunthas of land in relation with VPC authorities without any registered transfer document. Based on such document, defendant obtained false permission for construction of building in the portion of suit property and trying to dig the earth in the suit property. Now the case is at the stage of argument and defendant filed this application praying to appoint ADLR, Haliyal as Court Commissioner to

measure the suit property and fix boundaries contending that, the plaintiff's property is adjoining to his property and he has constructed shed in his land, however, the plaintiff is contending that, shed has been put up in his land. The plaintiff strongly objected to the application contending that if court commissioner is appointed it will amount to collection of evidence.

9. On perusal of plaint averments and prayer sought by the plaintiff, it is clear that, the plaintiff is contending that, he is in possession of suit property as absolute owner and he has not sold any portion to defendant. The defendant by creating false documents has got entered his names in the VPC records and obtained building permission to construct the house. Now defendant is trying to construct the building in the suit property. When the plaintiff is making allegation against the defendant and stating that, the defendant is interfering with his possession then the burden is on the plaintiff to prove his possession and alleged interference by the defendant. Further, the plaintiff is not contending that, defendant has put up shed in his land. Therefore, when the burden is completely on the plaintiff, he has to prove the same. There is no burden on the defendant to prove that, he has constructed shed in the suit property.

When there is no allegation regarding encroachment, question of appointment of ADLR, Haliyal as Court Commissioner to measure the suit property and fix the boundaries does not arise. Therefore, appointment of Court Commissioner at this stage is not required. As such, the defendant has not made out grounds to allow the application. Hence, **I answer Point No.1 in the Negative.**

**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.X filed by defendant under Order 26 Rule 9 of C.P.C., is hereby rejected.**

**No order as to costs.**

**For arguments, call on 13.02.2026.**

*(Dictated to the Stenographer directly on computer, corrected, signed and then pronounced by me in the open Court on 6<sup>th</sup> day of February, 2026).*

**(Geeta)  
Civil Judge & JMFC.,  
Haliyal.**