

IN THE COURT OF THE SENIOR CIVIL JUDGE AND ACJM,

KARKALA

Present: Smt.Sharmila C.S., B.A.L., LL.M.,
Senior Civil Judge and ACJM, Karkala.

Dated: This the 25th day of June , 2025.

FDP NO. 8/2024.

Smt. Vishalakshi,
And 4 others

..Petitioners

Versus -

Smt. Sarvani K. Shetty

.. Respondent

PARTIES TO I.A.NO. 2

Smt. Sarvani K. Shetty,
Aged 73 years,
W/o. Late Krishna Shetty,
Residing at 303 Golden Castle
Sundar Nagar, Lane N.2,
Khalina-400098, Maharastra State.

.. Applicant/
respondent

- Vs. -

1. Smt. Vishalakshi,
Aged 65 years,
W/o. Seetarama Shetty,
Residing at Opp: Near Mahaveera
School Road, Ward No.27,
Rozipur Doddaballapur Taluk,
Bangalore Rural District- 561 203.

2. Smt. Vimalakshi,
Aged 65 years,
W/o. Sadananda N. Shetty,
Residing at Bhoomi acres, Phase 2,
Bldg, L. Wing 1801, Opp: Hiranadani

Estate Road, Thane Kasarvadavali,
Thane, Maharastra-400 615.

3. Mr. Raveendra Shetty,
Aged about 63 years,
S/o. Sri. Late Muddanna Shetty,
Mishaki Nivasa, Ayyappanagara,
Kukkundoor Village and Post,
Karkala Taluk.
4. Mrs. Deepakshi @ Deepa K. V.,
Aged 52 years,
W/o. Vishwanath Kattani,
'Summane', No.27, 1st Main,
Banavara Main Road, Abbigere,
Bangalore-90.
5. Smt. Hema Umesh Acharya,
Aged 49 years,
D/o. Late Vishwanath Shetty,
11/408, 4th Floor, Opp: Bimbisar nagar,
Opp: NESCO, Goregaon East,
Mumbai 400 065. ..Opponents

i.	Provision under which the application is filed	Order XXVI Rule 9 and Section 151 of CPC
ii.	Relief sought for	To appoint commissioner for examination of the respondent
iii	The date on which the application is filed	04-03-2025
iv	Number of the application	I.A.No.2
v	The date on which the objections are filed by different opponents	26-03-2025
vi	The date on which the orders were passed on the said application.	25-06-2025

ORDERS ON I.A.No.2 FILED UNDER ORDER XXVI RULE 9
OF CPC

Application is filed by counsel for the Respondent seeking issuance of commission for the examination of the respondent.

2. In the memo of facts it is stated by the counsel for the respondent that the respondent is aged and is suffering from hypertension and other ailments. That her evidence is necessary and prays to appoint advocate for the examination of the respondent.

3. Counsel for petitioners objects that the application is filed only to drag the proceedings and denies that the respondent is suffering from ailments and prays to dismiss the application.

4. Heard from the counsel for petitioner and counsel the respondents.

5. The following point arise for my determination.

“Whether there is necessity of the appointment of the commissioner to record the evidence of the respondent. ?”

6. My answer to the above point is in affirmative for the following

REASONS

7. The present petition is for the execution of the partition as per the preliminary decree, where the question of improvements in the property was kept in abeyance to be decided in the final decree. Thus the present application is filed, where the respondent is intending to prove the improvements effected by her in the suit property.

8. In the memorandum of facts annexed to the application, it is stated that the respondent is aged about 80 years and in her advanced age, she is suffering from hypertension, urinary tract infection and astero arthrities of knee and she has been advised not to travel to long distances due to the said ailment and her advanced age. But no document is produced in this regard, which is the main objection of the petitioner. It is further objected by the petitioner that the petition and the decree shows the age of the respondent is 75 and not

80 and that the age of the respondent is deliberately wrongly mentioned in the memo of facts in order to make unlawful gain, which objections are very formal in nature. Based upon these facts, the application cannot be rejected. The presumption always arises that the person who is aged, would be naturally suffering from the age old ailments and they cannot be compelled to come to the court with all the ailments.

9. The other objection of the petitioners is that the respondent is not residing in the suit property, but in Mumbai and beyond the local limits of this court, which this court cannot issue the commission. Submits that the entire application is silent about the place of evidence to be recorded by the commissioner. Thus submits that this court has no jurisdiction to issue the commission.

10. In this regard, on perusal of Order XXVI , this court could note at rule 4(ii) provides that the court may in any suit issue a commission for the examination of any person resident beyond the local limits of its jurisdiction. Thus, this court is having the jurisdiction to issue commission for the examination of any person situated outside its jurisdiction and to the

examination of the person residing in Bombay. But this court has to note about the hardship of the parties to go to Bombay and the expenses that would be incurred in such a situation. However, before coming to the conclusion and to decide whether the respondent no. 1 needs to be examined at Bombay or within the local jurisdiction of this court, this court is of the opinion that the parties needs to be heard once.

11. However, there are sufficient grounds made out to appoint the court commissioner to record the evidence of the respondent . Hence, the above point is answered in affirmative.

12. In view of the above reasonings, the following

ORDER

I.A No. 2 filed by the respondent under Order XXVI Rule 9 and Section 151 of C.P.c., is herewith allowed.

Commissioner is appointed for recording of the evidence of the respondent.

Commissioner fee will be fixed as per the location of the examination of the witness.

The counsel for the respondent is directed to suggest the place of the examination of the 1st respondent , which shall be within the jurisdiction of this court. On the other hand, if the respondent needs to be examined out of the jurisdiction of this court, the respondent no.1 should bear the expenses of the parties to the petition and their counsels, including the TA and DA.

(Dictated to the Stenographer, directly on Computer , transcript corrected and then pronounced in Open Court on this the 25th day of June 2025.)

(SHARMILA C.S.)

Senior Civil Judge & ACJM Karkala.