

**ORDER ON I.A No. III**

The applicant/plaintiff has filed I.A No.III under Order 26 Rule 9 and Section 151 of CPC for appointment of an Advocate – Court Commissioner to visit the suit property and to note and report points mentioned in the application with the assistance of the Surveyor.

2. In the affidavit annexed to the application, it is stated that, the during his cross examination it is agreed by the defendant and got elicited that the defendant has no objection to appoint an advocate as a commissioner to measure his property and defendant property and further the defendant has agreed to bear the expenses of the commissioner in equal parts. Hence prays to allow the application.

3. On the other hand, the learned counsel for the defendant submitted no objection to allow the application.

4. Heard the learned counsel for the plaintiff and the learned counsel for the defendant.

5. The only point that arises for my consideration is:

1. Whether it is just and necessary for issuance of commission for local inspection of the suit properties for the purpose of elucidating the matter in dispute between the parties in this case?

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

**REASONS**

7. On perusal of averments made in the application, plaint and written statement, it is clear that the plaintiff has filed this for possession directing to the defendant to deliver possession of suit property to the plaintiff. In view of the application filed by the plaintiff and also perusal of the pleadings of either parties and note and report that the court-commissioner may measure, identify and prepare the sketch of the property of the plaintiff and defendant as per the judgment and decree passed in OS No.2/2019 on the file of this court. Further note and report that the defendant has encroached the suit property of the plaintiff and depict the same in sketch. The burden is upon him to prove the encroachment made by the defendant and plaintiff has filed application for appointment of court commissioner for making a local inspection for ascertaining the points mentioned in the application.

8. On the other hand defendant has submitted no objections to the application filed by the plaintiff for appointment of court commissioner.

9. As such there is serious dispute between the parties with regard to the encroachment of the suit property and the defendant has illegally put fencing over the suit property. It would be proper even for the advocate commissioner to make a local inspection for

property with regard to aspects mentioned in the application filed by the plaintiff and it is just and necessary to appoint the court commissioner in order to adjudicate the matter properly, therefore if the court commissioner is appointed it will help to the court to adjudicate the matter properly. Hence, if local commission is ordered as prayed in I.A.No.III by the court commissioner, it would meet the ends of justice. Hence, I answer the above point formulated by me in the affirmative and I proceed to pass the following:

**ORDER**

IA.No.III filed by the plaintiffs U/Or.  
26 Rule 9 and Section 151 of CPC is hereby  
allowed.

The defendant is permitted to file a  
work memo before the Court commissioner.

Commissioner fee is fixed at Rs.3,000/-

For naming of the advocate-  
commissioner and for payment of  
commission fees.

Call on: 28-08-2023

II Addl. Civil Judge and JMFC.,  
Karkala.