

**IN THE COURT OF PRINCIPAL CIVIL JUDGE AND  
JUDICIAL MAGISTRATE FIRST CLASS AT KUNDAPURA**

**Present : SMT. SHRUTHI SHREE S, *B.A. LL.B.*  
Prl. Civil Judge & J.M.F.C.,  
Kundapura.**

**Dated this the 15<sup>th</sup> day of February, 2024**

**Original Suit No. 490/2022**

**Parties to I.A. No. XXX:**

**Applicant/s:** 1) Sri. Rajaram Shetty, 52 years,  
S/o. Late Sadashiva Shetty,  
R/o. Maladi, Thekkatte Village and Post  
Kundapura Taluk, Udupi District.

**(By Advocate Sri/Smt. M.S.S.)**

*//Vs//*

**Opponent/s:** Smt. Jayamma  
D/o. Late Smt. Susheela Shedthi  
Agriculturist,  
Kavadimane, Maladi  
Thekkatte Village and Post  
Kundapura Taluk  
Udupi District

**(By Advocate Sri/Smt. M.J.S.)**

**Parties to the suit:**

**Plaintiff : 1) Smt. Jayamma**

*//Vs//*

**Defendant : 1) Sri. Rajaram Shetty and others**

|      |                                                                   |                                                                                                    |
|------|-------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| i.   | Provision under which the application is filed                    | U/s 151 of CPC                                                                                     |
| ii.  | Relief sought for                                                 | To direct the Tahsildar, Kundapura and the ADLR, Kundapur to conduct joint survey of suit property |
| iii. | The date on which the application is filed                        | 14-02-2024                                                                                         |
| iv.  | Number of the application                                         | I.A. No. XXX                                                                                       |
| v.   | The date on which the objections are filed by different opponents | Heard oral objection                                                                               |
| vi.  | The date on which the orders were passed on the said application  | 15-02-2024                                                                                         |

### **ORDER ON I.A. NO. XXX**

This application is filed by defendant No.1 U/s 151 of CPC seeking or to direct Tahsildar Kundapura along with ADLR to conduct joint survey of suit schedule property and 46 cents of land owned and possessed by 1<sup>st</sup> defendant adjoining to suit property on eastern side in the same survey No. 344/1 of Thekkatte Village Kundapura Taluk and to assign a new survey number to the said 46 cents of land belonging to 1<sup>st</sup> defendant.

2. In the accompanying affidavit it is contending that Hon'ble High Court of Karnataka in WP No. 23667/2023 as per order dated 30-01-2024 has directed joint survey of suit property and adjoining 46 cents of land owned and possessed by 1<sup>st</sup> defendant in the same survey number on the eastern side of suit property by joint survey of Tahsildar Kundapura and ADLR Kundapura and also new survey number would be assigned to said 46 cents of land belonging to 1<sup>st</sup> defendant.

3. A road is required to be formed into the aforesaid property of 1<sup>st</sup> defendant to approach his family property situated to the south of said property owned and possessed by 1<sup>st</sup> defendant from public road running east to west and adjoining the said property of 1<sup>st</sup> defendant on northern side. Accordingly seeks for direction to Tahsildar Kundapura and the ADLR Kundapura to conduct joint survey of suit property and 46 cents of land owned and possessed by 1<sup>st</sup> defendant adjoining suit property on the eastern side in the same survey No. 344/1 of Thekkatte Village and to assign new survey number to the said 46 cents of land belonging to 1<sup>st</sup> defendant.

4. Counsel for plaintiff seeks time for filing objection but on perusal of orders of Hon'ble High Court of Karnataka, this Court has permitted plaintiff to submit orally as the said order is directory to this Court and also refers that plaintiff herein should have no objection to allow an application for joint survey. Hence this Court have heard both sides on this application.

5. The points that would arise for my consideration are as under:

### **P O I N T S**

1) Whether the application filed by defendant  
No. 1 U/S 151 of CPC deserves  
consideration?

2) What order?

6. By considering the materials on record, after hearing both the parties, my answers to the above points are as follows:

**Point No.1: Partly in the Affirmative**

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

## **R E A S O N S**

7. **POINT NO.1 :** As per orders of Hon'ble High Court of Karnataka in WP No. 23667/2023 at para 4 which reads that “The petitioner may be permitted to file the necessary application before the Civil Court, where O.S. No. 490/22 is pending consideration, seeking a joint survey of the lands in question. Respondent No. 6 should have no objection to allow such an application and have a joint inspection of the lands in question. If for any reason there is a requirement for assignment of a new number to the land belonging to the petitioner, the same may be done by the revenue authorities and the survey settlement authorities.” It can be seen that Hon'ble High Court of Karnataka has permitted defendant No. 1 herein to file necessary application seeking a joint survey of disputed survey No. 344/1 of Thekkatte Village. As per application filed by 1<sup>st</sup> defendant, he is seeking for survey of suit schedule property along 46 cents of land owned and possessed by him adjoining suit property on eastern side in the same survey No. 344/1 of Thekkatte Village, Kundapura Taluk.

8. Counsel for plaintiff contends that this application is not in accordance with directions of Hon'ble High Court of Karnataka and also contends that as per pleadings of this application, no direction is made by

Hon'ble High Court of Karnataka. Accordingly seeks to reject the application. But looking into the averments made in the application, it is certain that 1<sup>st</sup> defendant is seeking for survey of suit schedule property along with adjoining property of 46 cents owned and possessed by 1<sup>st</sup> defendant towards east of suit schedule property.

9. Upon perusal of orders of this Court on I.A. No.2 and 20 which were filed by both plaintiff and defendant No. 1 respectively for temporary injunction for and against their respective 46 cents of land in survey No. 344/1 of Thekkatte Village, However it seems that Hon'ble High Court of Karnataka has in particular not directed that suit schedule property along with 46 cents of land owned and possessed by 1<sup>st</sup> defendant adjoining towards eastern side of suit schedule property is to be surveyed.

10. However as per observations of Hon'ble High Court of Karnataka in para No. 2 of the above said order, it is noted that 2 pieces of property which are adjacent to each other are in possession of plaintiff and 1<sup>st</sup> defendant respectively. However Hon'ble High Court of Karnataka has referred for a joint survey of disputed lands which are nothing but total extent of 92 cents of land in survey No. 344/1 of Thekkatte Village

Kundapura Taluk. Therefore though not as in accordance with the said direction, this application is filed but specifically 1<sup>st</sup> defendant has sought for survey of suit schedule property along with adjoining 46 cents of land in suit survey No. 344/1 on its eastern side. Orders on Hon'ble High Court of Karnataka does not specify the same as subjected by counsel for plaintiff. Thereby this Court cannot specifically direct to conduct joint survey of suit schedule property along with adjacent property towards its eastern side measuring 46 cents owned and possessed by 1<sup>st</sup> defendant. With respect to assigning new number to the land belonging to petitioner, it seems no direction would be required as it is with in purview of revenue authorities and survey settlement authorities as per orders of Hon'ble High Court of Karnataka. Therefore this application deserves consideration in part. Accordingly **POINT NO. 1** is answered **PARTLY IN THE AFFIRMATIVE**.

**11. POINT NO.2:** For the above made discussions, I proceed to pass the following:

## **O R D E R**

I.A. No. 30 filed by defendant  
No. 1 U/s 151 of CPC is hereby  
allowed in part.

Tahasidhar Kundapur along with ADLR is hereby directed to conduct joint survey of survey No. 344/1 measuring 92 cents of land situated in Thekkatte Village, Kundapura Taluk.

Issue notice if PF Paid.

Returnable by 18-03-2024

(Dictated to the stenographer, directly on computer, corrected by me and then pronounced in the open Court on this 15<sup>th</sup> day of February , 2024)

**(Shruthi Shree S.)**  
**Prl. Civil Judge & J.M.F.C.,**  
**Kundapura.**