

KAUP400011442023



**IN THE COURT OF CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS AT BAINDURU.**

PRESENT:

Smt.Vidya A.S. B.A., LL.B.
Civil Judge & J.M.F.C.,
Bainduru.

Dated this the 13th day of June, 2023.

Original Suit No.221/2023.

Old Original Suit No.424/2016.

Plaintiffs:	<p>1. Kuppu Poojarthi, Aged about 88 years, D/o. Seethu Poojarthi, W/o. Chikkayya Poojary, R/at: Yeljith Village and Post, Bainduru Taluk, Udupi District.</p> <p>2. Devi Poojarthi, Aged about 46 years, D/o. Kuppu Poojarthi, R/at: Yeljith Village and Post, Bainduru Taluk, Udupi District. No.2 both personally and also as GPA holder of No.1.</p>
	<p>--And--</p>
Defendants:	<p>1.Kalu Poojarthy, Aged about 68 years, D/o.Venkamma,</p> <p>2. Savithri, Aged about 51 years,</p> <p>3. Ravi, Aged about 49 years,</p>

4. Suresha,
Aged about 49 years,

5. Janardhana,
Aged about 45 years,

6. Ramesha,
Aged about 43 years,

7. Sujatha,
Aged about 36 years,

Nos.2 to 7 are the children of
No.1 Kalu Poojarthy,

8. Karuna
Aged about 32 years,
S/o No.2 Savithri,
Nos.1 to 8 are residing at
Doddamane, Yeljith Village and Post,
Byndoor Taluk, Udupi District.

9. Mooku Poojarty,
Aged about 79 years,

10. Chandu Poojarthy,
Aged about 61 years,

11. Somayya Poojary,
Aged about 60 years,

12. Kaveri Poojarthy,
Aged about 53 years,

13. Vittala Poojary,
Aged about 50 years,

14. Krishna Poojary,
Aged about 45 years,

Nos.9 to 14 are children of
Late Manjayya Poojary,

Nos 9 to 14 are residing at
Dombe Kottigemane,
Paduvari Village, Udupi District.

15.Veeramma Poojarthy,
Aged about 91 years,

16. Govinda Poojary,86 years

Nos. 15 and 16 are children of Muduri,

17. Marli Poojarthy

Aged about 66 years,
D/o Subbi and Wife of mudura Poojari,

18. Sudhakara,

Aged about 43 years,

19. Prabhakara,

Aged about 40 years,

20. Geetha,

Aged about 39 years,

21. Mamatha,

Aged about 36 years,

22. Malathi,

Aged about 32 years,
Nos. 18 to 22 are children of
No.17 Marli Poojarthy,

23. Annappa Poojary,

Aged about 79 years,

24. Eerayya Poojary,

Aged about 76 years,

25. Durgayya Poojary,

Aged about 71 years,

26. Smt. Nagu Poojarthy,

Aged about 61 years,
Widow of Rama Poojary,

27. Smt. Nagarathna,

Aged about 52 years,

28. Balindra,

Aged about 50 years,

29. Miss Bhagirathi,

Aged about 49 years,

30. Malathi,

Aged about 45 years,

31. Santhosha,

Aged about 43 years,
Nos. 27 to 31 are the children of
Late Rama Poojary,

32. Manji Poojathy,
Aged about 64 years,

33. Bhadra Poojary,
Aged about 61 years,

34. Laxmi Poojarty,
Aged about 58 years,

35. Thimmappa Poojary,
Aged about 66 years,

36. Vittala Poojary,
Aged about 55 years,
Nos. 23 to 25 and 32 to 36 are the
Children of Venkamma Poojathy,

37. Girija
Aged about 44 years,

38. Prabhakara,
Aged about 42 years,

39. Sulochana,
Aged about 40 years,

40. Lalitha,
Aged about 38 years,

41. Udaya,
Aged about 36 years,

42. Vijaya,
Aged about 34 years,
Nos 37 to 42 are the children of
Manji Poojathy No.32,
43. Sharada,
Aged about 39 years,

44. Raghava,
Aged about 37 years,
Nos.43 and 44 are the children of
No.34 Laxmi Poojathy,

Nos. 15 to 44 are residing at

Belgunji of No.1 Shiroor Village,
Byndoor Taluk Udupi District.

45. Seethu Poojarthi,
Aged about 55 years,
W/o Late Babu Poojari,

46. Devappa Poojary,
Aged about 64 years,

47. Rukmini Poojarthy,
Aged about 61 years,

48. Parvathi Poojarthy,
Aged about 59 years,

49. Anantha Poojary,
Aged about 57 years,

50. Ramesha Poojary,
Aged about 55 years,

51. Suresha Poojary,
Aged about 53 years,

52. Dinesha Poojary,
Aged about 51 years,

Nos. 46 to 52 are the children of
No.15 Veeramma Poojarthy,

53. Rohini,
Aged about 42 years,

54. Revathi.
Aged about 40 years,

55. Sridhara,
Aged about 38 years,

56. Anitha,
Aged about 38 years,

57. Nithyananda,
Aged about 34 years,

Nos. 53 to 57 are the children of
No.47 Rukmini Poojarthy,

- 58. Malathi,**
Aged about 40 years,
- 59.Hema,**
Aged about 38 years,
- 60. Nagaraja,**
Aged about 35 years,
Nos. 58 to 60 are the children of
No.48 Parvathi Poojarchy,
- 61. Seethu Poojarchy,**
Aged about 68 years,
- 62. Kaveri Poojarchy,**
Aged about 66 years,
- 63. Machi Poojarchy,**
Aged about 64 years,
- 64. Saku Poojarchy,**
Aged about 61 years,
- 65. Shankara Poojary,**
Aged about 56 years,
- 66. Sujatha,**
Aged about 51 years,
- 67. Sunanda,**
Aged about 49 years,
- 68. Sumathi,**
Aged about 43 years,
- 69. Surendra,**
Aged about 41 years,
- 70. Kalavathi,**
Aged about 39 years,
- 71. Santhosha,**
Aged about 46 years,
S/o No.63 Machi Poojarchy,
- 72.Suguna,**
Aged about 32 years,
D/o No. 63 Machi Poojarchy,

73. Soory Poojathy,
Aged about 71 years,
Widow of Bedu Poojathy,

74. Sanju Poojary,
Aged about 63 years,

75.Saroja Poojary,
Aged about 50 years,

76. Prameshwari,
Aged about 48 years,

77. Narayana,
Aged about 46 years,

78. Gulabi,
Aged about 43 years,

Defendant No.74 to 78 are the
children of Late Bedu Poojary,

Defendant No.62, 64, 65 and 70 are
R/at. C/o.Vasu Poojary, Belmane of
No.1 Shiroor Village, Bainduru Taluk.

Defendant No.63, 71 and 72 are
R/at: C/o. Chikku Poojathy, Yadahoige
of Kalthodu Village and Post,
Kundapura Taluk,
Udupi District,

Defendant No.48 and 58 to 60 are
R/at: C/o.Mahabala Poojary,
Bijoor Village, Kundapura Taluk,
Udupi District.

Defendant No.45 to 47, 49 to 57,
66 to 69
are R/at: Doddamane of Yeljith Village,
Bainduru Taluk,
Udupi District.

Defendant No.61, 73 to 78
R/at:Yeljith Village,
Bainduru Taluk,
Udupi District.

Rank of the Parties On I.A.VI

Applicant/plaintiffs:	Kuppu Poojarthi and another (Rep. by Sri.M.J.S. Advocate)
Opponent/plaintiff:	Kalu Poojarthi and others, (Rep. by Sri.M.M.H. Advocate for defendant No.1, 3 and 4 Sri.H.V.K.S. Advocate for defendant No.23 to 31, 33 to 37, 39 to 44, 63 defendant No.7, 9 to 14, 17 to 22, 32, 45, 47 to 62, 64 to 78 are absent. Defendant No.15, 16, 38, 46 dead.

ORDERS ON I.A. VI

The plaintiff has filed IA No.VI under order XXVI Rule 9 of CPC for appointment of Court Commissioner to conduct local inspection.

Details of work to be done

To visit the suit locality, to note the plaint "M" schedule properties, to note item No.2 and 9 of the plaint "M" schedule properties, to note the residential buildings, cow pens, drinking water wells and garden situated over portion of the "M" schedule properties, to note all the improvements situated over item No.9 of the "M" schedule properties, to Note the compound wall enclosing item No.2 of the "M" schedule properties and certain other properties along the "M" schedule properties, to note the stone compound wall enclosing the house site of the plaintiffs.

2. In the accompanying affidavit plaintiff has stated that, the 'A' schedule property detailed in the written statement of defendant No.1 to 8 i.e. 32 cents of land in S.No.197/7 of

Yeljith Village, Bainduru Taluk is unidentifiable and the same is part and parcel of item No.2 of the plaint 'M' schedule properties, situated within the stone compound wall constructed by the plaintiff's family enclosing the said property and certain other properties among the plaint 'M' schedule properties. Further stated that, there is no such 32 cents of separate property as detailed in schedule 'A' of the written statement of defendant No.1 to 8. That, similarly, item No.9 of the 'B' schedule properties detailed in the plaint is also part and parcel of item No.9 of the plaint 'M' schedule properties and the said 36 cents of land is unidentifiable and there is no such 36 cents of separate property in the spot. With these averments, the applicant has sought for allowing the application. The learned counsel appearing for the plaintiff in support of his submission, he has relied upon the following decisions reported in- **2021 0 ICLF (MP) 262, 2018 0 ICLF (HP) 187, 2014 2 KCCR 1652, 2014 2 KCCR 1641, 2021 1 AIR (Kar) (R) 381.**

3. Per contra, defendant has filed objection to the said application contending that, the entire suit rests on the proof of the grounds alleged in the plaint. From the averments made in the application, it is certain that, the plaintiffs are planning to construct a compound wall by encroaching the

WS schedule land and in order to create evidence application is filed. With these contentions the opponent has sought for reject the application. The learned counsel appearing for the defendant in support of his submission, he has relied upon the following decisions reported in- **2023 (1) KCCR 637: Shadaksharappa Vs.Kumari Vijayalaxmi and others.**

4. Heard and perused the materials on record.

5. Now, the following points arise for consideration of this Court are:

Point No.1: Whether the appointment of a commissioner for local investigation is necessary for the purpose of elucidating the matter in dispute ?

Point No.2: What order ?

6. The findings of this Court on the above said points are as under:

Point No.1: In the Affirmative,

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

REASONS

7. **Point No.1:**On perusal of case file, it is seen that the plaintiff has sued the defendants for seeking the relief of

declaration and also the relief of cancellation of the judgment and decree passed in OS. No.451/1989.

8. Order XXVI rule 9 specifically deal with Commissions to make local investigation. The rule states that **in any suit** in which the court deems a local investigation to be requisite or proper for the purpose of elucidating **any matter in dispute**, or of ascertaining the market value of any property, or the amount of any Menes profits or damages or annual net profits, the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the court.

9. Learned counsel for the defendant restricted his arguments to one submission which is that, when both parties are claiming possession, the question of possession cannot be ascertained by appointment of Court Commissioner. It is for the parties to lead necessary evidence to establish their possession. On perusal of the plaint and written statement, I am of the opinion that, the appointment of commissioner in this case is necessary to ascertain, whether the suit 'A' property detailed in the written statement of defendants is part and parcel of Item No.2 of the plaint 'M' schedule properties. Since, the dispute between the party is the existence of 32 cents of separate property, and to arrive at

proper conclusion it is necessary to appoint commissioner for investigation and submitting report. If the suit schedule properties of the plaintiffs and defendants are identified the dispute will come to an end. To avoid multiplicity of proceedings and to effected adjudication of the matter, is necessary to appoint a Court Commissioner. With these observations this Court answered Point No.1 in the Affirmative.

10. Point No.2: For the aforesaid discussion on point No.1, this Court proceeds to pass the following:

ORDER

I.A.No.VI filed by the applicant under Order XXVI Rule 9 of CPC is hereby allowed.

To suggest the name of court commissioner.

For Court commissioner report.

Call on: 14-06-2023

(Dictated to the stenographer, transcribed and typed by her, corrected by me and then pronounced in the open Court on this **13th day of June, 2023**)

**(Smt.Vidya A.S)
Civil Judge & J.M.F.C.,
Bainduru.**