

KAVN510004202013

**IN THE COURT OF THE CIVIL JUDGE AT HARAPANAHALLI.****Present : Shri.Manu Sharma S.P.,**

B.A.LAW.LL.M.

Civil Judge and JMFC, Harapanahalli

Dated this 11th day of March, 2026**OS No.29/2013****PLAINTIFF/s**

C.N.Lingaraja @ Ningappa S/o Nagappa,
Age. 48 Years, Occ. Business and
Agriculture, R/o Chigateri Village,
Harapanahalli Taluka, Davanagere
District.

(By Sri.K.B.R.Adv.,)

-Vs.-

DEFENDANT/s

1. Smt. Sakamma W/o Mudimallappa,
Age. 60 Years, Occ. Agriculture, R/o
Chigateri Villaeg, Harapanahalli Taluka,
Davanagere District.

2. Smt. Gangamma D/o Mudimallappa,
W/o Anjinappa, Age. 36 Years, Occ.
Agriculture, R/o Chigateri Villaeg,
Harapanahalli Taluka, Davanagere
District.

(By Sri.M.M.N.Adv.)**PARTIES TO ON IA No.XI****DEFENDANT/APPLICANT/
s**

1. Smt. Sakamma W/o
Mudimallappa, Age. 60 Years,
Occ. Agriculture, R/o Chigateri
Villaeg, Harapanahalli Taluka,
Davanagere District.

2. Smt. Gangamma D/o
Mudimallappa, W/o Anjinappa,
Age. 36 Years, Occ. Agriculture,
R/o Chigateri Villaeg,
Harapanahalli Taluka,
Davanagere District.

-Vs.-

PLAINTIFF/s/OPPONEN C.N.Lingaraja @ Ningappa S/o
T/s Nagappa, Age. 48 Years, Occ.
Business and Agriculture, R/o
Chigateri Village, Harapanahalli
Taluka, Davanagere District.

ORDER ON I.A.NO.XI

1. Defendant has filed application under Order XXVI Rule 9 of CPC for appointment of ADLR as court commissioner to measure the suit's schedule property by conducting local inspection.

2. The application is supported by affidavit of defendant no.2.

It is the contention of the defendant that suit schedule property is situated in Survey No. 216K. Defendant has also contended that he has totally denied the title of the plaintiff over the suit schedule property and matter is remanded one to read fresh evidence. Based on said contentions, defendants prayed for allowing the application.

3. Plaintiff has filed objection to the application, stating that defendants have raised false contentions in support of their application. Plaintiff has further stated that defendants have not pleaded their source of title properly and they have not made any counter claim in the written statement. Plaintiff has further stated

that there is no ambiguity with respect to identification of the suit schedule property and therefore appointment of commissioner is not a problem necessary in the present case. Based on said contentions, plaintiff prayed for rejection of the application.

4. Based on application and counter, the following points arise for my consideration:-

1] Whether defendants have made out any grounds for appointment of court commissioner as prayed for?

2] What Order?

5. Heard arguments and perused records of the case.

6. My findings on above points are as here under:-

Point No.1:- In the **Negative**.

Point No.2:- As per final order for following:-

REASONS

7. **Point No.1:-** The present application for appointment of court commissioner is filed by the defendants. It is to be noted that suit is one for declaration of title and permanent injunction. Plaintiff has pleaded that his father by name Nagappa and one Mudimallappa are the children of Fakirappa and his father had two wives. As per the averments made in the plaint, Mudimallappa has gifted the suit schedule property in favour of plaintiff. So here plaintiff is pleading source of title over the suit schedule property through his uncle Mudhimallappa. Needless to state that in a suit for declaration of title and permanent injunction, it is the burden of the

plaintiff to prove his title over the suit's property. Whether plaintiff has acquired a title through Mudimallappa can be decided even without conducting the spot inspection as claimed by the defendants. Moreover, when burden is on the plaintiff to prove his title, commission cannot be appointed at the instance of defendants. Moreover, defendants have not stated any justifiable reasons as to why appointment of commissioner is necessary in the present case. The nature of source of title pleaded by the plaintiff can be decided by referring to oral and documentary evidence. As such, appointment of commissioner in the present case is not at all necessary. Therefore, it is to be held that defendants have not made out any grounds to erode the application. Hence I answer point No.1 in the **Negative.**

8. Point No.4:- For the reasons stated above, I am of the considered opinion that application filed by the defendants is liable to be rejected by imposing costs. In the result, the following :-

ORDER

Application filed by defendants under Order XXVI rule, 9 of CPC is hereby rejected on cost of ₹ 500.

(Dictated to the Stenographer transcribed and typed by him, the transcript revised and corrected by me, and then pronounced in the open court on this **11th Day of March 2026.**)

(Manu Sharma S.P)
Civil Judge and JMFC.,
Harapanahalli.