

KAVP200028772022



IN THE COURT OF THE ADDL.SENIOR CIVIL JUDGE,
AT : BASAVANA BAGEWADI

PRESENT: Sri.ISHWAR S.M
B.A.LLB., (Spl)
Addl. Senior Civil Judge
& J.M.F.C., B.Bagewadi

Dated this the 1st day of August - 2025

O.S.No.276/2022

PLAINTIFF: Madivalayya S/o gurayya Math

-Versus-

DEFENDANTS: The Assistant Executive Engineer, Karnataka
Rural Infrastructure Development Ltd.,
Assistant Directors Office Sub Division,
B.Bagewadi and others.

PARTIES TO I.A.No.X

**Applicant/
P.A.holder of
Plaintiff** Madivalayya S/o Gurayya Math,
Age: 62 years, Occ: Agriculture,
by his General Power of Attorney holder,
Malakayya S/o Mallayya Hiremath,
Age: 38 years, Occ: Agriculture,
R/o: Deginal, Tq: B.Bagewadi,
Dist: Vijayapura

(By Sri M.H.Khasnis, Advocate)

-Versus-

Opponents: The Assistant Executive Engineer, Karnataka
Defendants Rural Infrastructure Development Ltd.,
 Assistant Directors Office Sub Division,
 B.Bagewadi and others @ Shilpi and others
(D-1 and 3 By Learned ADGP)
(D-2 By Sri. S.B.Biradar, Advocate)
(D-4 By Sri M.G.Jahagirdar, Advocate)

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| i | Provision under which the application is filed | Under order XXVI Rule 9 of CPC |
| ii | Relief sought for | With a prayer to appoint ADLR as Court commissioner. |
| iii | The date on which the application is filed | 17.06.2025 |
| iv | Number of the application | 10 |
| v | The date on which the objections are filed by different opponents | - |
| vi | The date on which the orders were passed on the said application | 01.08.2025 |
| vii | The application filed by | Plaintiff |
| viii | Stage of the suit | For orders on I.A.No.1 |

(ISHWAR S.M)
 Addl. Senior Civil Judge
 & J.M.F.C.,B.Bagewadi

ORDERS ON I.A.X

The applicant/P.A. holder of plaintiff has filed I.A.No.X
 U/o XXVI Rule 9 of CPC, praying this Court to appoint ADLR

i.e. Tahasildar Land Survey, B.Bagewadi/Taluka Surveyor as a Court commissioner in order to visit the suit land of the plaintiff and thereby answer the memo of instructions annexed along with the I.A.

2. The I.A. is accompanied with affidavit, wherein it is contented that, the original plaintiff has filed suit seeking declaration that, he is the absolute owner and possessors of land bearing Sy.No.227/4B measuring 03 acres 13 guntas situated at village Deginal, of B.Bagewadi Taluka. The defendants have encroached and trespassed in the land of plaintiff. Now, the defendants are asserting that, they have not made any encroachment in the land of the plaintiff. To prove the said illegal acts of the defendants to show that, they have made encroachment in the land of plaintiff at point "ECF", it is just and necessary to measure the land of the plaintiff and to fix its boundaries more particularly the eastern boundary line of the plaintiff's land. Without the aid of the Court commissioner, the plaintiff is unable to prove his case. Further, the plaintiff is ready to pay the Court commissioner's fee and ready to bear the expenses. Hence, among these and other grounds prayed to allow the I.A.

3. That, the defendant No.1 has filed objections to the application contending that, the application filed by the plaintiff is untenable in law and the contents of the affidavit are all false. It is stated that, the plaintiff has filed the present application only to drag on the matter and in order to harass the defendants. It is stated that, the hand sketch produced by the plaintiff is false and not as per the situation existed. The Zilla Panchayat has entrusted the work to the defendant No.1 and the defendant No.1 has developed the road, which was already existed and he has not created any new road. Already the plaintiff has made measurement through ADLR and fixed the boundaries of the plaintiff's land. So, again the plaintiff is seeking to measure the land by filing the present application. As per Ex.P-5 and 6 the plaintiff himself has filed application before the ADLR requesting to measure the land and fix the boundaries. Hence, the ADLR measured the land and given report and same is submitted by the plaintiff. In Ex.P-4 nowhere it is disclosed that, the defendant has encroached the land of the plaintiff. Hence, the appointment of Court commissioner does not arise at all. Now, the case is posted for argument, at this belated stage, the application filed by the plaintiff is with an oblique motive, hence, same is liable to be

dismissed. Therefore, among these and other grounds the defendant No.1 prayed to reject the application.

4. Heard and perused the case records

5. The following points that would arise for consideration are;

POINTS

1. *Whether the plaintiff has made-out sufficient grounds to allow I.A.No.X?*

2. *What order?*

6. My findings to the above points as under:

Point No.1 : In the

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

REASONS

7. **Point No.1:** The facts of the case is that, the original plaintiff has filed suit seeking declaration of title and possessor of suit property and also for permanent injunction against the defendants restraining them from making the road in the suit land of plaintiff at "ECF" as shown in the plaintiff hand sketch. But, now, the defendants are asserting that, they have not made any encroachment in the land of the plaintiff. To prove the said illegal acts of the defendants to show that,

they have made encroachment in the land of plaintiff at point “ECF”, it is just and necessary to measure the land of the plaintiff and to fix its boundaries more particularly the eastern boundary line of the plaintiff’s land. Without the aid of the Court commissioner, the plaintiff is unable to prove his case.

8. On the other hand, it is the contention of the defendant No.1 is that, the present application only to drag on the matter and in order to harass the defendants. The hand sketch produced by the plaintiff is false and not as per the situation existed. The Zilla Panchayat has entrusted the work to the defendant No.1 and the defendant No.1 has developed the road, which was already existed and he has not created any new road. Already the plaintiff has made out measurement through ADLR and fixed the boundaries of the plaintiff’s land. So, once again the plaintiff is seeking to measure the land by filing the present application. As per Ex.P-5 and 6 the plaintiff himself filed application before the ADLR requesting to measure the land and fix the boundaries. Hence, the ADLR has measured the land and given report and same is submitted by the plaintiff. In Ex.P-4 nowhere it is disclosed that, the defendant has encroached the land of the plaintiff.

Hence, the appointment of Court commissioner does not arise at all. On those grounds prayed to reject the I.A.

9. The learned counsel for the plaintiff relied on the decision reported in **2001 (2) KCCR 1283** in case of Anil **Kamalakar Shirodkar V/s Dudhappa Santu Patil and Another**. Wherein the Hon'ble High Court of Karanataka has held that;

*CODE OF CIVIL PROCEDURE, 1908- Order 26,
Rule 9- Appointment of Commissioner -Trial
Court allowed request and appointed Surveyor
as Commissioner to survey property -
Discretionary order - Appointment of
Commission justified - Revision Petition
dismissed.*

10. That, on perusal of the documentary evidence produced by the plaintiff at Ex.P-3 to P-6, as per the application of the plaintiff, the ADLR, B.Bagewadi has measured the land and submitted report at Ex.P-3. Wherein he has reported at point No.3 an area measuring 05 guntas was went in road in the suit land towards eastern boundary of the suit land.

11. The ADLR also reported that, an area measuring 06 guntas of suit land towards western border boundary was encroached by the land holder of Sy.No.227/4A and an area measuring 05 guntas was encroached by the land holder of Sy.No.227/4 in land Sy.No.227/4A towards western side of land Sy.No.227/4A. On perusal of Ex.P-4/village map, towards eastern side and southern side of land Sy.No.227, the road is in existence, which runs towards east-west and north-south abutting to the land Sy.No.227.

12. That, on perusal of the Ex.P-5 and P-6, the representation given by the plaintiff to the defendant No.1, wherein the plaintiff has categorically stated that, on 15.04.2022 he has given application to the ADLR, B.Bagewadi for measurement of the suit land and as per his request the ADLR, B.Bagewadi has measured the land and fixed the boundaries. The said report is not tallying with measurement done by the defendant No.1.

13. From the said documentary evidence it is clear that, prior to filing of the suit, the plaintiff has got measured the land Sy.No.227 and the said report is produced before the Court at Ex.P-3. Further, on perusal of the village map

towards southern and eastern side of the land Sy.No.227, there is existing road. The plaintiff has already admitted in the representation given to the defendant No.1 at Ex.P-5 and P-6, that the ADLR, B.Bagewadi has fixed the boundaries by measuring land Sy.No.227. When the plaintiff has already got measured the land Sy.No.227 along with suit land and the report is very much available on record, and even the boundaries are also fixed and in the said report it is also reported that, an area measuring 05 guntas towards eastern side is went in the road, then, what more else is required to the plaintiff to establish his case. If at all the plaintiff has any grievance with respect to the said sheet at Ex.P-3, the plaintiff can very well seeks summon the ADLR, B.Bagewadi to examine him. But, without doing so, the plaintiff has filed the present application for doing the same work which was already on record at Ex.P-3. Therefore, as rightly contended by the defence counsel, the whatever report seeking by the plaintiff is already on record. Therefore, with due respect to the ratio laid down in the said decision relied upon by the plaintiff, but the said decision is not squarely applicable to the facts and circumstances of the case on hand. Hence, the plaintiff has

not made out grounds to allow the I.A. Hence, my findings to

Point No.1 is in the Negative.

14. **Point No.2:** For the reasons said above, I proceed to pass the following;

ORDER

*I.A.No.X filed by the Plaintiff U/o
26 Rule 9 of CPC is hereby rejected with
costs of Rs.1,000/-.*

No order as to costs.

(Typed my dictation through online by the Stenographer, script corrected, signed by me and then pronounced in the Open Court on this the 1st day of August - 2025)

(ISHWAR S.M)

Addl. Senior Civil Judge
& J.M.F.C.,B.Bagewadi