

02-06-2026

ORDERS ON I.A.NO.II

The counsel for applicant/defendant has filed an application under Order XXVI Rule 9 with 151 of CPC seeking the court to appoint an advocate of this Bar or any suitable person as the court commissioner to conduct the local inspection of land bearing Sy.No.121 and the property VPC No.265/B situated at Ward No.I and area of drinking water tank constructed by the defendant at Nivalakhed village.

2. It is contented in the affidavit that the plaintiff is the owner of the above said property, after obtaining the permission from the Gram Panchayat, Mulasavalagi, he started to construct the house. The defendants are constructing the water tank in land bearing Sy.No..121 which comes under Mulasavalagi Panchayat the said water tank is adjacent to the property of the plaintiff, due to which she is loosing the peaceful use and enjoyment of the property right. The defendants have started the construction by digging pits by encroaching the property of the plaintiff. Therefore prays to appoint of commissioner for local inspection of the property to ascertain the facts.

3. As the defendant No.1 and 2 represented though the counsel but they have not filed any objection.

4. Perused the application.
5. Heard the arguments for the counsel for plaintiff.
6. The following point arises for my consideration.
 - i) Whether the plaintiff/applicant has made out sufficient grounds to allow application filed U/O. XXVI Rule 9 R/w. Sec.151 of C.P.C. ?
 - ii) What order ?
7. My findings to the above points are as follows :

Point No.1 : In the Affirmative.

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

REASONS

8. **Point No.1** : The present suit has been filed by the plaintiff for the relief of permanent injunction with respect to suit property against the defendant No.1 and 2. As now the case is posted for the further plaintiff's evidence, at this stage the plaintiff has come up with the present application for appointment of the Court Commissioner. In spite of sufficient opportunities, the counsel for defendant No.1 and 2 have not submitted any objections and written statement.
9. Before going to discussion it is necessary to peruse Order XXVI Rule 9 of C.P.C. The provisions of Order

XXVI Rule 9 of C.P.C. are very clear and for the ready reference the same is reproduced below :

“9. Commissions to make local investigations.--

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 mesne 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.

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

10. It is clear from the above that during pendency of the trial and before the Judgment if the Trial Court finds that any issue requires clarification or elucidation, the Court may suo moto appoint Commissioner to submit the report for which no application is required.

11. The scope of Order XXVI Rule 9 of C.P.C. is very limited. The Trial Court in any suit in which a local investigation is required or proper for purpose of elucidating any matter of dispute may appoint a Commissioner. It is settled law that the parties are required to prove their own case by way of evidence, therefore, it is the duty of plaintiff/defendant to first give evidence in support of their case and after the evidence of

parties, if Court deems it proper that any issue requires clarification then the Court may appoint a Commissioner. The report of Commissioner is merely a piece of evidence and not binding on the Trial Court. It can be used for the purpose of appreciating the evidence that has come on record. The Hon'ble Supreme Court has also considered the scope of Order XXVI Rule 9 of C.P.C. and held that the provision of Order XXVI Rule 9 of C.P.C. is to be invoked if the controversy is regarding demarcation of the land between the parties.

12. Further, in the case of Durga Prasad Vs. Parveen Foujdar, reported in (1975) MPLJ 810 has also considered the scope of Order XXVI Rule 9 and held that the Court should order the appointment of Commission when there is a dispute of encroachment. Para 25 of the said judgment is reproduced as under :

‘25. Point No.2: In cases where there is a dispute as to encroachment, the fact whether there is such an encroachment or not cannot be determined in the absence of an agreed map, except by the appointment of a Commissioner U/O.XXVI Rule 9 of the Code of Civil Procedure.’

13. In view of the law laid down in the above Judgments, the commission can be appointed only in case of demarcation and encroachment. The issue of possession is to be decided only on the basis of evidence. In the present case, as the defendant has denied vary title of the plaintiff the plaintiff has averred that the

defendant has acquired 6 Guntas land However, the defendant denied the case of plaintiff in its entirety.

14. The appointment of commissioner is a necessary to conduct the inspection regarding the fact. Hence, on considering the facts and circumstance of the case, this Court comes to the conclusion that the applicant has made out sufficient grounds to appoint Court commissioner in order to find out the exact state of affairs in the suit schedule property. Hence, this Court answer Point No.1 in the Affirmative.

15. **Point No.2:** For the foregoing reasons, this Court proceeds to pass the following :

ORDER

I.A.No.II filed by the defendant/applicant U/O.XXVI Rule 9 R/w. Sec.151 of C.P.C. is hereby allowed.

The counsel is directed the furnish the name of the Advocate to appoint the counsel as Court Commissioner and also directed to deposit the Court Commissioner fees at Rs.2,000/-.

Call on 10.06.2026.

**Prl. Civil Judge,
Sindagi.**