

**IN THE COURT OF PRL. CIVIL JUDGE & J.M.F.C.,
SINDAGI**

Present

SMT.PANKAJA KONNUR
B.A.,LL.B.
Prl.Civil Judge & JMFC, Sindagi.

O.S.No.324/2017

DATED THIS THE 17th DAY OF APRIL 2026

PLAINTIFF:

1. Mohamed yashin S/o. Daresab Malur,

-V/s-

DEFENDANTS:

1. Bhimaraya S/o. Hanamant Waddar and others

PARTIES TO I.A. No.VII

APPLICANT/PLAINTIFF:

1. Mohamed yashin S/o. Daresab Malur,

(By Sri.M.N.P, Advocate)

V/s.

OPPONENTS/DEFENDANTS:

1. Bhimaraya S/o. Hanamant Waddar and others

(By Sri.A.M.A., Advocate)

ORDERS ON I.A. NO.VII FILED BY THE
PLAINTIFFU/O. XXVI RULE 10

This application is filed by the counsel for a plaintiff for seeking the appointment of the court commissioner to ascertain the encroachment of the suit property.

2. As it is contented in the affidavit that, the present suit is filed against the defendants for a permanent injunction wherein the defendants have encroached the property of the plaintiff and they are causing the interference. Therefore, in order to ascertain the same, prays to appoint PWD Engineer as a court commissioner. If said application is allowed, no harm will cause to the other side.

3. The same is objected by the counsel for a defendant stating that only in order to drag the matter the present Drag the matter and harass the defendant. The present application is filed. Therefore prays to reject the application.

4. Perused the application and objection.

5. Heard arguments of both sides.

6. The following point arises for my consideration.

- i) Whether the plaintiff/applicant has made out sufficient grounds to allow I.A.No.VII filed U/O.XXVI Rule 10 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: As the suit is filed by the plaintiff against the defendant for a relief of permanent injunction restraining the defendant from encroaching the suit property. As the case of the plaintiff is that the plaintiff is the owner and possessor of the VPC No.842, wherein the defendants are trying to encroach the property which is situated towards the Towards the northern to eastern side of VPC No. 842 which was purchased by the plaintiff for consideration amount of ₹1,00,000 on 29.05.2012 itself. Since that date till today he is enjoying the same property without any obstruction from any others. In spite of request the defendants are not hearing the words of the plaintiff. They are trying to cause the interference. Therefore the present suit is filed restraining the defendants from the interference permanently. Now the case is

posted for the cross of DW1. At this stage the plaintiff has come up with the present application. Now question before the court is that at this stage the court can consider the said application. As per Section Order XXVI Rule 10 of C.P.C. the court can consider the application at any stage to ascertain the actual fact wherein in this case the plaintiff is seeking for the inspection with regard to the encroachment of the property of the plaintiff as alleged by him. The same is objected by the counsel for a dependent stating that the present application is filed only to drag the matter in order to fill the lacunas. No doubt the present application is filed at a belated stage. But it is not a ground to reject the application.

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.

12. The case in hand as no doubt already the plaintiff has commenced his case, now case is posted for cross of DW1, now present application is filed, If it is required for adjudication of the matter, the court can appoint the court commissioner at any stage. To ascertain actual fact which is denied by the defendant, this court has an opinion that the appointment of the court commissioner is necessary. Therefore, this Court answered the above point in affirmative.

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

ORDER

The application filed the counsel for plaintiff U/O.

XXVI Rule 10 of C.P.C. i.e. I.A. No.VII is hereby allowed.

The PWD engineer, Sindagi is appointed as the court commissioner and Commissioner fee is fixed at Rs.2000/- same is directed to deposit in CCD.

Further the counsel for plaintiff and defendant are directed to furnish their memo of instructions if any and Court Commissioner is directed to issue prior notice to both the parties before conducting the commissioner work.

Issue Commissioner Warrant if amount is deposited.

(Dictated to the Stenographer directly over the computer and typed by him, corrected, signed and then pronounced by me in the Open Court on this the 17th day of April 2026)

(Smt. Pankaja Konnur)
Prl. Civil Judge & JMFC, Sindagi.