

**IN THE COURT OF THE ADDL. CIVIL JUDGE & J.M.F.C.,
HOSADURGA**

PRESENTS

**Smt. Thrinethra M.N.
M.A., L.L.B,**

Addl. Civil Judge & JMFC, Hosdurga

O.S.No.230/2023

DATED THIS 14th DAY OF JULY-2026

Plaintiff : Sri. H.R. Kalleshappa,
(By Sri. A.L.B., Advocate)

Versus

Defendants : Sri. B. Muzeebkan,
(By Sri. K.M., Advocate

Parties to IA No.II

**Plaintiff/
Applicant :** Sri. H.R. Kalleshappa,

Versus

**Defendants/
Opponents :** Sri. B. Muzeebkan,

ORDER PASSED ON I.A.No.II

The applicant/plaintiff has filed the present application under Order XXVI Rule 9 of the Code of Civil Procedure seeking appointment of a Court Commissioner to measure and fix the boundaries of the suit schedule property, the properties of the defendant, as well as the adjacent sites of both the plaintiff and the defendant, and to prepare a sketch and submit a report.

2. The applicant/plaintiff has filed an affidavit in support of the application. In the affidavit, it is stated that he has instituted the present suit against the defendant seeking the reliefs of declaration and mandatory injunction. It is specifically contended that the plaintiff purchased the suit schedule Item No.1 property from B.R. Ramanna, S/o Rangappa, under a registered Sale Deed dated 15.11.2005 for valuable consideration, and pursuant thereto, he was put in possession of the said property. Since the date of acquisition, he has been the lawful owner in possession and enjoyment of the suit schedule Item No.1 property. It is further contended that the defendant has no manner of right, title or interest over the suit schedule Item No.1 property.

It is further stated that the defendant is the owner of Site Nos.4 and 5, along with three other sites, situated at Ayyappaswamy Badavane, Hosadurga Town, bearing Municipal Khatha Assessment No.7098/4937/4. Site No.4 measures East-West 30 feet and North-South 40 feet, bounded by: East – Road; West – Site of Jayanna; North – Site No.5 of Muzeeb Sab; and South – Site No.1 of Muzeeb Sab. Site No.5 measures East-West 30 feet and North-South 40 feet, bounded by: East – Road; West – Land of Jayanna; North – Road and Anjaneya Extension; and South – Site No.1 of Muzeeb Sab. According to the plaintiff, the defendant's properties are situated towards the eastern side of the plaintiff's suit schedule Item No.1 property. The plaintiff further contends that he recently noticed and believes that a portion of the suit schedule property has been encroached upon by the defendant. Hence, according to him, it has become necessary to appoint a Court Commissioner to conduct a local inspection, measure the suit schedule property as well as the defendant's properties, and submit a report to facilitate proper adjudication of the dispute involved in the suit.

It is further contended that if the application is rejected, the plaintiff will suffer hardship and irreparable injury. On the

other hand, if the application is allowed, no hardship or prejudice will be caused to the defendant. Accordingly, the plaintiff has sought appointment of a Court Commissioner for local inspection and measurement of the properties in dispute and has prayed to allow the application.

3. The opponent/defendant has filed objections to the application contending that the suit is one for declaration and mandatory injunction and that the present application seeking appointment of a Court Commissioner is not maintainable.

It is further contended that the defendant is the absolute owner in lawful possession and enjoyment of Site Nos.1 to 6 situated at Ayyappaswamy Extension, Hosadurga Town. It is stated that the defendant purchased Site Nos.1, 4 and 5 under one registered Sale Deed and Site Nos.2, 3 and 6 under another registered Sale Deed, both dated 10.03.2008, from their lawful owner, Sri C.M. Mruthyunjayappa. It is further contended that the vendor had acquired an extent of 10 guntas in Sy.No.13/1 under a registered Sale Deed dated 08.03.1982, wherein the survey number was inadvertently mentioned as Sy.No.31/1, and the same was subsequently rectified by a registered Rectification

Deed dated 11.08.1982. Thereafter, the vendor got the khatha transferred to his name, obtained conversion of the land for non-agricultural residential purposes, secured approval of the layout, formed six sites and thereafter conveyed the same in favour of the defendant. It is further contended that ever since the date of purchase, the defendant has been in lawful possession and enjoyment of the said sites, having got the khatha transferred to his name and by regularly paying taxes to the competent authority.

It is further contended that the plaintiff has no manner of right, title or interest over the defendant's properties and that the suit schedule property is not situated either to the north or to the west of the defendant's sites, as alleged. Hence, the question of encroachment does not arise. It is further contended that the plaintiff himself has pleaded the alleged encroachment only on the basis of a presumption and has not produced any document issued by the competent authority to establish such encroachment. According to the defendant, the relief of mandatory injunction is not maintainable in the absence of proof of encroachment. It is also contended that a Court Commissioner cannot be appointed for the purpose of collecting

evidence or for ascertaining whether there is any encroachment when the plaintiff has failed to establish the identity and existence of the suit schedule property. On these grounds, the defendant has prayed to dismiss the application with exemplary costs.

4. Heard both the Counsels.

5. Upon hearing and on perusal of materials placed on record, the following Points that would arise for my consideration:

POINTS

1) Whether the plaintiff have made out the grounds for appointment of Court Commissioner as prayed in IA No.III?

2. What Order?

6. My findings to the above Points are as under:

Point No.1 : In the Affirmative

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

REASONS

7. **POINT NO.1** :- The plaintiff has instituted the present suit seeking the reliefs of declaration of title and mandatory injunction directing the defendants to remove the alleged encroachment over the suit schedule Item No.2 property and to restore possession of the same.

8. The suit is presently at the stage of plaintiff's evidence. The application filed by the plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure seeking appointment of a Court Commissioner is therefore required to be considered in the light of the pleadings of the parties and the nature of the dispute involved in the suit.

9. On careful perusal of the plaint averments, the affidavit filed in support of the application and the objections filed by the defendants, it is evident that the plaintiff claims to be the absolute owner in possession of the suit schedule property and has specifically alleged that the defendants have encroached upon a portion of the suit schedule Item No.2 property. On the other hand, the defendants have denied the allegation of encroachment and have disputed the identity and location of the plaintiff's property. Thus, the real controversy between the parties relates to the identity, location, measurement and boundaries of the respective properties and the alleged encroachment.

10 Order XXVI Rule 9 of the Code of Civil Procedure empowers the Court to issue a commission for local investigation whenever

such investigation appears to be necessary or proper for the purpose of elucidating any matter in dispute or for enabling the Court to effectively adjudicate the issues involved in the suit. The object of appointing a Court Commissioner is not to enable either of the parties to collect evidence in support of its case, but to assist the Court in ascertaining the physical features, identity, location and boundaries of the property which are relevant for proper adjudication of the dispute.

11 In the present case, the plaintiff has alleged that the defendants have encroached upon a portion of the suit schedule property, whereas the defendants have specifically denied the said allegation. In view of the rival pleadings, the identity, measurement and boundaries of the properties assume considerable significance. Mere oral and documentary evidence may not sufficiently assist the Court in appreciating the actual physical position of the properties. Therefore, a local investigation by a competent Court Commissioner would facilitate proper and effective adjudication of the controversy involved in the suit.

12. In this regard, this Court is guided by the decision of the Hon'ble High Court of Karnataka in Sri Shadaksharappa Vs. Kumari Vijayalakshmi and Others, 2023 SCC OnLine Kar 53, wherein it has been held that , the Court has ample power under Order XXVI Rule 9 of the Code of Civil Procedure to appoint a Court Commissioner for local investigation.

13. Therefore, having regard to the nature of the dispute, the pleadings of the parties, the stage of the suit and the principles laid down in the aforesaid decision, this Court is of the considered opinion that this is a fit case to exercise the discretionary power under Order XXVI Rule 9 of the Code of Civil Procedure by appointing the PDO of Kellodu Grama Panchayat as the Court Commissioner to conduct local inspection, measure the suit schedule properties of the plaintiff and the defendants, fix the boundaries with reference to the title deeds and relevant records, prepare a sketch and submit a factual report to this Court. Such local investigation would assist the Court in effectively adjudicating the dispute between the parties.

Accordingly, Point No.1 is answered in the Affirmative.

14. **POINT NO.2**:- In view of the reasons assigned above, this court proceed to pass the following :

ORDER

I.A.No.II filed by the Plaintiff under Order 26 Rule 9 of CPC is hereby allowed.

The PDO kelloodu Grama panchayath is hereby appointed as court commissioner.

The Court commissioner fees is fixed at Rs.2,000/-.

Both parties are directed to file memo of instruction.

No order as to costs.

(Dictated to the Stenographer directly on the computer typed by her, corrected and pronounced by me in the open court on this the 14th day of July, 2026).

**Addl. Civil Judge & JMFC.,
Hosadurga.**