

**ORDERS ON APPLICATION FILED UNDER ORDER 26  
RULE 9 OF CPC**

Advocate for appellant filed application under section 26 rule 9 of CPC and prays to appoint the court commissioner. Along with the application appellant filed his affidavit and stated that he was and is in possession of the suit schedule property in view of the agreement dated 17-11-2012. After taking possession of the same he has constructed a hotel by using steel sheets. To know this fact the appointment of Court commissioner is very essential and hence prays to appoint a City Surveyor Davanagere as Court Commissioner.

2. Per contra advocate for respondent opposed the application by filing objections on the ground that, the appellant/plaintiff has filed the above suit and he himself dodge the proceedings by one way or the other for the purpose of having wrongful gain and put the respondent into having wrongful loss. Admittedly based on deed of agreement to sale in dispute it is suit for permanent injunction against the respondent/defendant for not to alienating the suit schedule properties.

3. Further, respondent/defendant has filed his written-statement and hence it is prayed to this Court may kindly be treated said written-statement as part and parcel of objection

to interim application. Respondent in his written-statement specifically averred that this Court has no jurisdiction to try the above matter and further the court fee paid on the plaint is inadequate. On account of said reasons the appointment of commissioner which is sought by the applicant is not maintainable and same is liable to be dismissed. Further, stated that applicant had filed IA No.6 U/o 26 Rule 9 of CPC before trial court on 07-01-2020 and this respondent has filed objection to IA No.6 and said IA No.6 was rejected on 14-01-2022. Further, applicant had filed IA No.9 U/o 26 Rule 9 of CPC and sought the same relief as sought in this application on 03-12-2022 and this respondent had filed objection to IA No.9 and said IA No.9 was dismissed with exemplary cost on 16-02-2023 and on other grounds prays to dismiss the application.

4. The points that arised for consideration is as follows:

1. Whether the application filed by the appellant under order 26 rule 9 of CPC is deserves to be allowed?

2. What order?

5. Answers to the above points are as under:

Point No.1: In the negative

Point No.2: As per the following Order

**REASONS**

**6. Point No.1:** The present appeal arised out of the Decree passed in O.S. NO. 503/2013. The during the course of proceedings the appellants filed present application and seeking an appointment of Court-Commissioner to ascertain the actual possession of the suit property. However, as per the materials on record the appellant approached the trial court twice on the same relief by filing interim applications. The Trial court by its order dated 14-01-2022 & 16-02-2023 as rejected those applications. Furthermore there is no materials on record to show that whether said order were challenged or not. More so, as per the decision of Hon'ble High Court of Karnataka in a Case of Puttappa V/s Ramappa reported in AIR 1996 Karnataka 257 has held that:-

***“In a suit for injunction the question as to who is in possession of the property is a matter to be decided by the court on the basis of the evidence, either oral or documentary, to be adduced by the parties. That function cannot be delegated to a commissioner who cannot find out as to who is in possession of the property.”***

7. The present appeal is arisen out of the judgment passed in of OS No.503/2013 and said suit was filed for the relief of permanent injunction against the defendants. Under such circumstances appointment of Court-Commissioner cannot be done to know the possession of property as per the said decision. More so, as stated supra appellant already approached the trial court for the same relief by filling interim applications and learned trial court rejected his applications. Said orders passed by the trial court was not challenged. With this observations, I answered Point No.1 in the negative.

**8. Point No.2:** For the reasons stated above and on the basis of above findings, I proceed to pass the following:-

**ORDER**

***The application filed by the  
appellant under order 26 rule 9 is  
here by rejected.***

***For respondents arguments on  
merit by 01-04-2025.***

**(Reshma H.K.)  
1<sup>st</sup> Addl. Senior Civil Judge  
and JMFC., Davanagere.**