

**(2010) 03 KAR CK 0213**

**In the Karnataka High Court**

**Case No :** Writ Petition No's. 35317 and 35318 of 2009

Smt. Rathnamma and Others

APPELLANT

Vs

Smt. Ademma

RESPONDENT

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**Date of Decision :** 03-03-2010

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 18, Order 26 Rule 9

**Citation :** (2010) 3 KarLJ 130

**Hon'ble Judges :** K. Bhakthavatsala, J

**Bench :** Single Bench

**Advocate :** Jwalakumar, for the Appellant; Muniyappa K., for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

K. Bhakthavatsala, J.—The petitioners/plaintiffs in O.S. No. 126 of 2002 on the file of Civil Judge (Senior Division), KGF, are before this Court praying for quashing the common order dated 11-11-2009 passed on I.A. Nos. 9 and 10 filed by the petitioners/plaintiffs in the above said suit at Annexure-E.

2. Learned Counsel for the petitioners submits that at the stage of arguments, the petitioners filed I.A. No. 9 under Order 26, Rule 9 of the Civil Procedure Code, 1908 for appointment of Taluk Surveyor as Court Commissioner to measure the suit schedule land and to know whether the houses, samadhi and other properties exist in the suit schedule land and another application I.A. No. 10 under Order 18, Rule 18 of the CPC praying the Court to visit the spot and make inspection. Both the applications were rejected by the Trial Court. Learned Counsel for the petitioners submits that if Commissioner is appointed and report is obtained, it would help the Court in deciding the issue effectively, but the Trial Court erred in rejecting the application for appointment of Commissioner. He further submits that he does not press the writ petition challenging the order passed on I.A. No. 10 filed under Order 18, Rule 18 of the CPC.

3. The only point that remains for consideration is as to whether the Trial Court

was justified in rejecting the application filed by the petitioners for appointment of Commissioner? In my view there is no illegality or infirmity in the impugned order in rejecting I.A. No. 9 filed under Order 26, Rule 9 of the CPC. In other words, the petitioners have not placed any material to show that the evidence available on record is not sufficient for effective adjudication of the case. There is no merit in the writ petitions.

In the result, both the petitions fail and they are hereby dismissed.