



CNR: KAHC010011112023

NC: 2026:KHC:44797
W.P. No.332/2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 19TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.332/2023 (GM-CPC)

BETWEEN:

SMT. PALLAVI SHETTY
W/O VINAY SHETTY
AGED ABOUT 38 YEARS
AGRICULTURIST
NEERKOD HOUSE
POST SHANKARANARAYANA
VILLAGE-576227
KUNDAPURA TALUK
UDUPI DISTRICT
REP. BY HER FATHER GPA HOLDER
SRI. CHANDRASHEKAR SHETTY.

...PETITIONER

(BY SRI. CHANDRANATH ARIGA K, ADV.,)

AND:

1. RAJEEVA NAIK
S/O MANJU NAIK
AGED ABOUT 44 YEARS
POST SHANKARANARAYANA
VILLAGE-576227
KUNDAPURA TALUK
UDUPI DISTRICT.
2. JALAJA NAIK
W/O MANJU NAIK
AGED ABOUT 62 YEARS
POST SHANKARANARAYANA
VILLAGE-576227
KUNDAPURA TALUK
UDUPI DISTRICT.

Digitally signed
by RUPA V

Location: HIGH
COURT OF
KARNATAKA



NC: 2026:KHC:44797
W.P. No.332/2023

CNR: KAHC010011112023

3. ARUN KUMAR NAIK
S/O NARAYANA NAIK
AGED ABOUT 34 YEARS
POST SHANKARANARAYANA
VILLAGE-576227
KUNDAPURA TALUK
UDUPI DISTRICT.
4. KRISHNA NAIK
S/O KORGU NAIK
AGED ABOUT 58 YEARS
POST SHANKARANARAYANA
VILLAGE-576227
KUNDAPURA TALUK
UDUPI DISTRICT.
5. KRISHNA NAIK
S/O MUTHA NAIK
AGED ABOUT 60 YEARS
POST SHANKARANARAYANA
VILLAGE-576227
KUNDAPURA TALUK
UDUPI DISTRICT.
6. MANJUNATHA NAIK
S/O KORGU NAIK
AGED ABOUT 48 YEARS
POST SHANKARANARAYANA
VILLAGE-576227
KUNDAPURA TALUK
UDUPI DISTRICT.

...RESPONDENTS

(R1, R2, R3, R6 ARE SERVED
V/O/DTD:14.08.2026 SERVICE OF NOTICE TO R4, R5 ARE H/S)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND
227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE
THE ORDER DATED 05.12.2022 PASSED ON I.A.NO. XXV IN
NO. 118/2017 ON THE FILE OF II ADDL. CIVIL. JUDGE AND



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JMFC I CLASS, KUNDAPURA (ANNEXURE- F). REJECT THE APPLICATION I.E. I.A.NO XXV FILED BY THE RESPONDENTS IN O.S.NO. 118/2017 ON THE FILE OF II ADDL CIVIL JUDGE AND JMFC I CLASS, KUNDAPURA (ANNEXURE- D) & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This writ petition is filed challenging the order dated 05.12.2022 passed on I.A.No.25 in O.S.No.118/2017 on the file of II Additional Civil Judge and JMFC, Kundapura (for short, '***the trial Court***').

2. Sri.K.Chandranath Ariga, learned counsel appearing for the petitioner-plaintiff submits that petitioner had filed a suit in O.S.No.118/2017 for permanent injunction against the respondents-defendants. In the said suit, the defendants filed the counter claim seeking relief of declaration that defendant No.1 and their predecessors in title have acquired the right over the written statement schedule 'B' property by adverse



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possession; schedule 'B' property is shown as property measuring 16 cents in Item No.1 of the schedule 'A' property in the plaint. It is submitted that even before laying any foundation in the form of evidence, defendant No.1 filed the application seeking appointment of Court Commissioner and the trial Court allowed the said application without assigning any proper reasons. It is further submitted that the trial Court has recorded reasons that it is necessary to ascertain the actual extent of written statement schedule 'B' property, which is impermissible as the defendants are required to place evidence before the Court and if the Court comes to the conclusion that the evidence adduced is not sufficient, then under such circumstances, the Court can consider appointment of Court Commissioner. Hence, he seeks to allow the petition.

3. Though the notice is served on the respondents, they remained absent.



CNR: KAHC010011112023

NC: 2026:KHC:44797
W.P. No.332/2023

4. I have heard the arguments of the learned counsel for the petitioner and meticulously perused the material available on record.

5. The petitioner-plaintiff has filed the suit in O.S.No.118/2017 seeking the relief of permanent injunction restraining the defendants from interfering with schedule 'A' property, which is consisting of 6 items. In the said suit, the defendant No.1 has filed written statement-cum-counter claim. In the counter claim, the defendant No.1 has sought the relief of declaration that they and their predecessors in title have acquired right over the written statement schedule 'B' property by adverse possession and the schedule 'B' to the counter claim is measuring 16 cents of land in Sy.No.341/1A2. The said 'B' schedule forms a part of Item No.1 of schedule 'A' property to the plaint.



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6. It is to be noticed that the defendant No.1 has filed an application under Order XXVI Rule 9 and Section 151 of the Code of Civil Procedure, 1908 (for short, '**the CPC**') seeking to appoint Court Commissioner for local inspection to note and report and to identify the land bearing Sy.No.341/1A2 measuring 16 cents situated at Shankaranarayana Village and other prayers. The trial Court under the impugned order allowed the application by recording the reasons that the relief of declaration is sought in the counter claim and the 'B' schedule property is required to be identified.

7. It is to be noticed that the application is filed even before the conclusion of the trial. The defendant No.1 in the aforesaid suit has raised the counter claim and stated that the defendants are in adverse possession of 16 cents in Sy.No.341/1A2 and to establish the said fact, the defendants are required to adduce evidence before the trial Court and if the defendants, after adducing the



evidence, are of the view that the evidence adduced creates ambiguity or is insufficient to consider the relief of declaration, then they would have filed an application seeking appointment of Court Commissioner for local inspection to clarify evidence already adduced.

8. In my considered view, entertaining of an application filed by the defendant No.1 seeking appointment of a Court Commissioner for local inspection at the initial stage of the proceedings, even before conclusion of the trial, for the purpose of identifying the property in respect of which the defendant No.1 in the counter claim is seeking a relief of declaration, is impermissible. However, it is required to be noticed that if after adducing the evidence, the defendants find out that it is necessary to seek appointment of the Court Commissioner, then under such circumstances, they can always file such an application.



NC: 2026:KHC:44797
W.P. No.332/2023

CNR: KAHC010011112023

9. With the aforesaid observations, I proceed to pass the following:

ORDER

- i. The writ petition is ***allowed***.
- ii. The impugned order dated 05.12.2022 passed in O.S.No.118/2017 on the file of II Additional Civil Judge and JMFC, Kundapura, is set aside.
- iii. The defendants are granted liberty to file an application seeking appointment of Court Commissioner, if need arises, after conclusion of the trial.

No order as to costs.

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

BSR
List No.: 1 Sl No.: 33