



CNR: KAHC010060662021

NC: 2026:KHC:42506
WP No. 2771 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 2771 OF 2021 (GM-CPC)

BETWEEN:

1. S MANJULA
W/O S LOKESHAPPA
AGED ABOUT 63 YEARS
R/O NO.12, SHIVA NILAYA
5TH CROSS, 7TH MAIN, SUBBANNA GARDEN
BEHIND AYAPPA TEMPLE
VIJAYANAGARA
BENGALURU-560040

REPRESENTED BY HER GPA HOLDER DINESHA S L
S/O S LOKESHAPPA
AGED ABOUT 41 YEARS
R/O NO.12, SHIVA NILAYA
5TH CROSS, 7TH MAIN, SUBBANNA GARDEN
BEHIND AYAPPA TEMPLE
VIJAYANAGARA
BENGALURU-560040

Digitally signed
by ANNAPURNA
G
Location: High
Court of
Karnataka

...PETITIONER

(BY SRI. P N HARISH., ADVOCATE)

AND:

1. GORI JAN
W/O HUSSAIN ULLA KHAN
AGED ABOUT 54 YEARS
R/O MANAGAVADI BASHA KHAN MANJIL
3RD MAIN ROAD



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NEAR MYTHRI NURSING COLLEGE
NANJAPPA LAYOUT, VIDYANAGARA
SHIVAMOGGA CITY-577201

2. L SATHYANARAYANA RAO
S/O R N LAKSHMANA RAO
AGED ABOUT 58 YEARS
EX PRESIDENT OF CITY MUNICIPALITY
SHIVAMOGGA
R/O 13TH MAIN, 60 FEET ROAD
SAVI BAKERY SHOP DOWN
II STAGE, VINOBBHANAGARA
SHIVAMOGGA CITY-577201

...RESPONDENTS

(BY SRI. R. CHANDRA KUMAR., ADVOCATE FOR R-1)
(R2- SERVED)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 18.01.2021 ON I.A.NO.18 PASSED BY THE COURT OF LEARNED PRINCIPAL SENIOR CIVIL JUDGE AND CJM, SHIVAMOGGA IN O.S.NO.213/2014 AS PER ANNEXURE-E AND THEREBY ALLOW THE APPLICATION MADE UNDER IA NO.18 PRODUCED AS PER ANNEXURE-D FILED IN O.S.NO.213/2014 ON THE FILE OF PRINCIPAL SENIOR CIVIL JUDGE AND CJM, SHIVAMOGGA AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING- 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 18.01.2021 on I.A No.18 passed in O.S.No.213/2014 by the Principal Senior Civil Judge and CJM, Shivamogga (for short 'The Trial Court')

2. Sri. P.N. Harish, learned counsel appearing for the petitioner submits that petitioner has filed a suit for declaration and possession and other reliefs. The defendant filed a written statement denying the plaint averments and contending that there is no encroachment by defendant No.1. The parties adduced the evidence. An application for appointment of Court Commissioner was filed by the plaintiff and the said application came to be allowed by the trial Court and subsequently, Court Commissioner has reported that the defendant has encroached the suit schedule property to the extent of 55 ½ feet + 55 feet towards the north to south side. Hence, an application for amendment to the Schedule 'B'



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property of the plaint was filed, which came to be rejected by the trial Court on the ground that the application was filed belatedly after conclusion of the trial, and the application was filed without any due diligence and that the plaintiff cannot rely fully on the court commissioner's report in seeking amendment.

3. Further, it is submitted that the plaintiff had no occasion to seek amendment until the report was placed before the Court and by this amendment to the schedule of the plaint, no prejudice would be caused to the defendant. Hence, he seeks to allow the writ petition.

4. *Per contra*, learned counsel appearing for respondent No.1 supports the impugned order of the trial Court and submits that the plaintiff claims to have purchased the Site No. 28 in the year 1992 and the suit came to be filed in the year 2014 and the present application is filed in the year 2020 seeking amendment without any due diligence.



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5. It is submitted that the relief claimed by the petitioner in the suit is barred by law of limitation. Hence, the suit itself is not maintainable and the question of allowing the application for amendment would not arise.

6. In support of his contention, he placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Chitra and another vs. C. Natarajan***¹ and the decision in the case of ***J. Samuel and another vs. Gattu Mahesh and others***². Hence, he seeks to dismiss the writ petition.

7. I have heard the arguments of the learned counsel for the petitioner and learned counsel for the respondent No.1 and meticulously perused the material placed on record.

8. The petitioner has filed a suit in O.S.No.213/2014 against the respondents herein seeking relief of declaration that the Schedule 'B' property which is

¹ Civil Appeal No. 9774 of 2026 dated 28.07.2026

² (2012) 2 SCC 300



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a part and parcel of Schedule 'A' property and the declaration that the plaintiff is the owner of the Schedule 'A' property, relief of possession against the defendant No.1 with regard to the Schedule 'B' property and permanent injunction.

9. In the said suit, defendant No. 1 filed a detailed written statement denying the plaint averments by specifically contending that the defendant had purchased Site No. 30 and the plaintiff's site is Site No.28 and another Site No. 29 was existing and in the year 2012, a tar road has been formed. At that time, the authorities have encroached the plaint schedule property by denying that the defendant has encroached the suit schedule property. The parties led the evidence. Thereafter, the plaintiff filed an application under Order XXVI Rule 9 of Code of Civil Procedure, 1908, ('CPC' for short) seeking appointment of Court Commissioner which was allowed. The Court Commissioner submitted the report. The report indicates that Schedule 'B' property has been encroached



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to the extent of 55 ½ feet + 55 feet. Pursuant to the said commissioner's report, the plaintiff filed an application seeking amendment of the plaint more particularly Schedule 'B' property which came to be rejected by the trial Court mainly on the ground that application is filed after an inordinate delay and after conclusion of the trial.

10. It is required to be noticed that the question of delay in filing application would not arise. The plaintiff has made a specific assertion in the plaint that defendant No.1 had encroached the plaintiff's property to the extent of 40 X 50 feet and after the report of the Court Commissioner, he came to know that the encroachment is more than what was stated in the plaint and considering the said aspect the plaintiff had filed an application seeking amendment of the Schedule 'B' to the plaint. Hence, the question of delay or due diligence has no application to the case on hand.



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11. It is not the case of the defendant that plaintiff was well aware about the encroachment even before the commencement of the trial with regard to extent now mentioned and that the said facts are now intended to bring on record by way of amendment and only under such circumstances, the proviso to Order VI Rule 17 of the CPC would apply.

12. Admittedly, the proposed amendment to the plaint is based on the report of the Court Commissioner, which is admittedly after the conclusion of the trial. Hence, due diligence has no application to the facts and circumstances of the present case.

13. The decisions of the Hon'ble Supreme Court referred supra are the cases where the Hon'ble Supreme Court has held that the application for amendment of pleading cannot be allowed in a routine manner in the absence of any due diligence. The said decisions have no application to the facts and circumstances of the case.



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14. It is also required to be noticed that by allowing the present application for amendment, which would change the Schedule 'B' property to a certain extent. Such an amendment would not cause any prejudice to the defendant, as the plaintiff has laid a foundation in his pleadings as well as in his evidence with regard to the encroachment. However, the extent of encroachment is varied in view of the Court Commissioner's report. Hence, I am of the view that the trial court has committed an error in rejecting the application by stating that the application is filed after inordinate delay and without due diligence.

15. For the aforementioned reasons, I proceed to pass the following order:

ORDER

- i. The writ petition is ***allowed***.
- ii. The impugned order dated 18.01.2021 on
I.A No.18 passed in O.S.No.213/2014 by



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the Principal Senior Civil Judge and CJM,
Shivamogga, is set aside.

iii. The application filed by the plaintiff under
Order VI Rule 17 of CPC is allowed.

iv. If the issue of limitation raised by the
defendant in the additional written
statement, it shall be considered by the
trial Court along with other issues in the
suit.

v. No order as to costs.

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

SKS