



CNR: KAHC010062252026

NC: 2026:KHC:45775
WP No. 2250 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.2250 OF 2026 (GM-CPC)

BETWEEN:

SMT. RAJAMMA
D/O. LATE DODDA VEERAPPA,
HINDU,
AGED ABOUT 71 YEARS,
R/AT C/O DR. HANUMAKKA,
2ND CROSS, DOCTOR'S QUARTERS,
ASHOKA ROAD, TUMKUR - 572101.

...PETITIONER

(BY SRI. K. MURTHY, ADVOCATE)

AND:

SRI. M. MURALIDHARA
S/O. C. MUNIYELLAPPA,
AGED ABOUT 55 YEARS,
R/AT NO.57, KORAMANGALA 1ST BLOCK,
SARJAPURA MAIN ROAD,
JAKKASANDRA EXTENSION,
BANGALORE-560034.

...RESPONDENT

(BY SRI. HARISHA T., ADVOCATE FOR C/R)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE ANNEXURE-A, THE ORDER ON I.A.NO.15 UNDER ORDER XXVI RULE 9 OF CPC DATED 21-01-2026, PASSED BY THE XLIV ADDL. CITY CIVIL AND SESSIONS JUDGE (CCH-45), AT BANGALORE CITY IN O.S.NO.279/2016 BY ALLOWING THIS WRIT PETITION AND PASS SUCH OTHER ORDER/S OR RELIEF/S AS DEEMS FIT UNDER THE



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FACTS AND CIRCUMSTANCES OF THE CASE FOR ALLOWING I.A.NO.15 AS PRAYED FOR, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR HEARING – INTERLOCUTORY APPLICATION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL ORDER

Impugning the order passed on I.A.No.15 filed by the defendant (petitioner) dated 21.01.2026 on the file of XLIV Additional City Civil and Sessions Judge, Bengaluru, CCH-45, (**'the Trial Court'**) in O.S No. 279/2016, the petitioner is before this Court in this Writ Petition. By the impugned order, the Trial Court dismissed the application filed by the petitioner under Order XXVI Rule 9 of the Code of Civil Procedure [**CPC**].

2. The plaintiff (respondent) instituted suit in O.S No. 279/2016 seeking declaration that the plaintiff is the absolute owner of the suit schedule property and for permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment. The suit property is bearing Sy No. 11/4 of Jaraganahalli Village, Bengaluru South Taluk. The plaintiff contended that he purchased the schedule property under



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a registered sale deed dated 16.03.2011 from one Pullapa. The defendant filed written statement *inter alia* claiming right over the very same property. The defendant filed an application under Order XXVI Rule 9 of the CPC for appointment of ADLR as Court Commissioner to visit the spot and identify both the plaint and written statement schedule property. It is averred in the affidavit accompanying the application that both the parties to the suit are claiming their right in respect of the properties purchased from Pullappa and his family members who sold the schedule property. In those circumstances, it is just and proper to appoint a Commissioner for spot inspection. The said application was objected by the respondent.

3. The Trial Court on consideration rejected the application. The Trial court found that the plaintiff and the defendant are claiming right over the same property and observed that the demarcation and encroachment of the property was not alleged by the parties. Further, that the suit is one for relief of declaration and ownership. The issues are framed and the burden is cast upon the plaintiff to prove his case by adducing cogent and convincing evidence including the existence and identity of the property with



specific boundaries and property number. The Trial Court found that the power to appoint the Commissioner for local inspection cannot be exercised by the Court, as there was no identification of the property in dispute by both the parties claiming the rights to the same property. In the circumstances, the Trial Court rejected the application.

4. The learned counsel appearing for the petitioner submits that the properties of both the parties is situated in Sy No. 11/4 and further that both the parties admitted the boundaries on four corners. Hence it was clear that the plaintiff is making a false claim against the defendant by creating a false document dated 16.03.2011 after the purchase of the property by defendant on 20.11.1989 and hence the identification of the property which is sought by the defendant could be made through a Court Commissioner if the Court Commissioner is appointed as sought in I.A.No. 15.

5. Per contra, the learned counsel appearing for the respondent sought to justify the impugned order contending that there was no valid reasons for appointment of a Court



Commissioner and that the application was belated. The defendant has purchased the property under a registered sale deed dated 20.11.1989 without katha and mother deed and therefore the question of appointment of a Commissioner would not arise. It is submitted that the local inspection by the Commissioner is permitted only under the circumstances where there is a dispute as to the demarcation and encroachment of the property involved and not otherwise.

6. Having heard the learned counsel, this Court has considered the submissions and perused the impugned order.

7. The suit is one for declaration and permanent injunction in respect of the property bearing No.11/4 measuring 35 x 40 feet with specific boundaries as enumerated in the plaint. The defendant filed her written statement seeking her right over the property measuring 30 x 40 feet. The Court Commissioner under Order XXVI Rule 9 of CPC could be appointed to make local inspection in a suit where local investigation is requisite for the purpose of elucidating any matter in dispute, or of ascertaining the market- value of any property, or the amount of any *mesne* profits



or damages or annual net profits. The circumstances made out in the present suit do not involve appointment of a Commissioner to conduct the local inspection. As rightly held by the Trial Court, the demarcation and encroachment of the property is not alleged by either of the parties. The issue was cast upon the plaintiff to establish the existence and identity of the property with specific boundaries. The facts were required to be adduced by evidence in the Court and cannot be entrusted to the Commissioner. The power of appointment of Commissioner for local inspection cannot be exercised by the Court to assist the party to collect evidence where it can get the evidence itself. It is also noted that the parties have already concluded their evidence and that the matter was set down for arguments. At that stage, the application was filed. Since the burden was upon the plaintiff to prove the identification of the property, the appointment of Commissioner was unwarranted and rightly considered by the Trial Court.

8. For the foregoing reasons, this Court does not find any reason to interfere with the impugned order. The Writ Petition is accordingly dismissed.



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Since the suit is of the year 2016, the Trial Court shall dispose of the suit as expeditiously as possible.

Sd/-

JUSTICE K.S. HEMALEKHA

CKL
List No.: 1 Sl No.: 3