



CNR: KAHC010079942026

NC: 2026:KHC:38939  
WP No. 3099 of 2026

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 27<sup>TH</sup> DAY OF JULY, 2026**

**BEFORE**

**THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

**WRIT PETITION NO. 3099 OF 2026 (GM-CPC)**

**BETWEEN:**

K.R.VEERANNA  
S/O LATE K.B. RUDRAPPA  
AGED ABOUT 57 YEARS  
BUSINESSMAN  
R/O DOOR NO.1990,  
PURANTARA HOSPITAL ROAD  
MCC 'A' BLOCK,  
DAVANAGERE - 577 001

...PETITIONER

(BY SRI. D.R.RAVISHANKAR, SENIOR COUNSEL FOR  
SRI.SARAVANA S., ADVOCATE)

**AND:**

1. SMT A.N.INDUMATHI  
W/O SRI. A. NATARAJ  
AGED ABOUT 74 YEARS  
R/O DOOR NO.9,  
53-A CROSS, 16TH MAIN  
3RD Y BLOCK, RAJAJINAGARA  
BANGALORE - 560 016
2. SMT. K.R. NAGARATNA  
W/O SRI. S. MUDDANNA  
AGED ABOUT 59 YEARS  
R/O DOOR NO.515,  
RR RESIDENCY, FLAT NO.F  
24TH CROSS RAMCO BHEL LAYOUT  
KENCHANAHALLI, RR NAGARA



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BANGALORE - 560 098

3. SMT. K.R. MALA  
W/O SRI. K.A. MANJUNATH  
AGED ABOUT 55 YEARS  
R/O DOOR NO.567/3,  
6<sup>TH</sup> MAIN, 6<sup>TH</sup> CROSS  
P.J. EXTENSION, DAVANAGERE
4. SMT. HEMALATHA S VALI  
W/O SRI. SHIVAYOGI S VALI  
AGED ABOUT 70 YEARS  
R/O B-3, SHARAVATHI STOP  
YALAHANKA NEW TOWN  
BANGALORE
5. SMT. B.M. VIJAYA  
W/O SRI. B. MALLAPPA  
AGED ABOUT 68 YEARS  
R/O MAGGE VILLAGE  
ALUR TALUK,  
HASSAN DISTRICT - 573 129
6. SRI. K.R. SHIVAKUMAR  
S/O LATE K.B. RUDRAPPA  
AGED ABOUT 72 YEARS  
R/O DOOR NO.1990,  
PURANTARA HOSPITAL ROAD  
MCC 'A' BLOCK,  
DAVANAGERE
7. SRI. K.R. PRAKASH  
S/O LATE K.B. RUDRAPPA  
AGED ABOUT 62 YEARS  
R/O DOOR NO.1990,  
PURANTARA HOSPITAL ROAD  
MCC 'A' BLOCK,  
DAVANAGERE
8. SRI. K.R. THIPPESH



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S/O LATE K.B. RUDRAPPA  
AGED ABOUT 60 YEARS  
R/O DOOR NO.1990,  
PURANTARA HOSPITAL ROAD  
MCC 'A' BLOCK,  
DAVANAGERE

9. SRI. K.R. PRABHU KUMAR  
S/O LATE K.B. RUDRAPPA  
AGED ABOUT 55 YEARS  
R/O DOOR NO.1990,  
PURANTARA HOSPITAL ROAD  
MCC 'A' BLOCK,  
DAVANAGERE
10. SMT. K.R. MADHU  
W/O LATE N.V. GIRISH  
AGED ABOUT 55 YEARS  
R/O DOOR NO.1/1, 34TH CROSS  
RAJAJINAGARA,  
BANGALORE
11. SMT. SUNANDA R GUJJAR  
W/O RAJANNA GUJJAR  
AGED ABOUT 58 YEARS  
R/O DOOR NO.20/21,  
17TH CROSS, MAGADI CHORD ROAD,  
NEAR MARUTHIMANDIR  
BANGALORE - 560 040
12. SMT. HANUMAKKA  
W/O LATE K. THIPPANNA  
AGED ABOUT 70 YEARS  
R/O KELAGOTE,  
CHITRADURGA-577501
13. SRI. GAURAV  
S/O SRI. K.R. THIPPESH  
AGED ABOUT 28 YEARS  
R/O DOOR NO.1990,



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DR. PURANTAR HOSPITAL ROAD  
MCC 'A' BLOCK,  
DAVANAGERE-577001

14. SRI. SANKETH  
S/O SRI. K.R. THIPPESH  
AGED ABOUT 24 YEARS  
R/O DOOR NO.1990,  
DR. PURANTAR HOSPITAL ROAD  
MCC 'A' BLOCK,  
DAVANAGERE-577001

15. KUM. NAMRATA  
D/O SRI. K.R. THIPPESH  
AGED ABOUT 26 YEARS  
R/O DOOR NO.1990,  
DR. PURANTAR HOSPITAL ROAD  
MCC 'A' BLOCK,  
DAVANAGERE-577001

16. SMT. K.S. SHOBHA  
W/O SRI. K.R. SHIVAKUMAR  
AGED ABOUT 66 YEARS  
R/O DOOR NO.1990,  
DR. PURANTAR HOSPITAL ROAD  
MCC 'A' BLOCK,  
DAVANAGERE-577001

...RESPONDENTS

(BY SRI. YESHU BABA R MISHRA, ADVOCATE FOR R1 TO R3,  
R10 AND R11

SRI.P.M.SIDDAMALLAPPA, ADVOCATE FOR R4

SRI.VIVEK HOLLA, ADVOCATE FOR R6 TO R9, R13, R14  
AND R16

SRI.YASHWANTH NETHAJI N.T., ADVOCATE FOR

SRI.K.V.NARASIMHAN, ADVOCATE FOR R12,

SRI./SMT.SATHYA D., ADVOCATE FOR R12

R5 IS SERVED

NOTICE TO R14 IS HELD SUFFICIENT V/O/D 09/06/2026

NOTICE TO R15 IS DISPENSED WITH)



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO GRANT AN INTERIM ORDER TO STAY THE OPERATION AND EXECUTION OF THE IMPUGNED ORDER DATED:30.01.2026 PASSED BY THE 2ND ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, DAVANAGERE IN I.A.NO. 4 OF FDP NO. 17/2024 AS PER ANNEXURE-E.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 10.06.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

**CAV ORDER**

Aggrieved by the order dated 30.01.2026 passed in I.A.No.4 in FDP.No.17/2024 by the II Additional Senior Civil Judge and JMFC, Davangere, the petitioner, who is respondent No.6 in the FDP petition, is before this Court.

2. The respondent Nos.1 to 3, who are the petitioners in FDP.No.17/2024, had filed I.A.No.IV under Order XXVI Rule 13 read with Section 151 of CPC, seeking the appointment of a Court Commissioner to demarcate the 1/12th share each of the respondent Nos.1 to 3 in the schedule properties, item



Nos.1 to 8 and 11 to 27, and to submit a report to the trial Court. Along with the application, petitioner No.3 therein had filed an affidavit asserting that she and the other petitioners had filed suit in O.S.No.26/2010 seeking partition, and the said suit came to be decreed through judgment and decree dated 31.08.2023, by allotting 1/12th share each to her and the other petitioners therein. Further, it was asserted that, in order to demarcate their 1/12th share each in the petition schedule properties, the appointment of a Court Commissioner is essential. Hence, they requested the trial Court to allow the application.

3. The respondent No.3 therein had filed a detailed objection opposing the application, contending that there is an ambiguity in the preliminary decree passed in O.S.No.26/2010, which did not allot the shares to defendant Nos.2 to 6. Further, he contended that the learned Judge declared that the plaintiffs Nos.1 to 5 and defendant Nos.1, 7 and 8 are entitled to 1/12<sup>th</sup> share each in the suit properties, and the fate of the remaining 4 shares has not been clarified in the preliminary decree. Further, he raised several contentions regarding the existence



of agricultural lands. Further, he contended that RSA.No.256/2024 is pending before this Court and a stay has been granted. Hence, he sought to dismiss the application.

4. The trial Court allowed I.A.No.IV filed by the respondent Nos.1 to 3. While allowing the application, the trial Court observed that respondent No.3 and other respondents have already filed R.A.No.32/2018 and 46/2018 challenging the judgment and decree passed in O.S.No.26/2010, and both appeals were dismissed, against which RSA.No.256/2024 is pending before the High Court. The High Court granted stay only on the drawing of the final decree, without the leave of the Court, and other proceedings can go on. Now, the trial Court proceeded to appoint a Court Commissioner to demarcate the shares as per the preliminary decree passed in the original suit. The objections filed by respondent No.3 cannot be considered at this stage, and accordingly the application was allowed. Aggrieved thereby, the petitioner is before this Court.

5. Learned Senior Counsel, representing the counsel for the petitioner/respondent No.6, submits that the trial Court has failed to consider the objections filed by the petitioner. It is



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submitted that the suit was decreed on 31.08.2023. Aggrieved by the same, the petitioner, who is the original defendant No.6, along with defendant Nos.2 to 4 and 6, have filed RFA No.2425/2023 and RFA No.2471/2023, and other appeals are RFA.No.35/2024 and RFA CROB.No.2/2024, in which a stay was granted by the Court. Despite the same, the Court has appointed the Advocate Commissioner. Learned Senior Counsel further submits in RFA, the Court has observed that the final decree shall not be drawn without the leave of the Court, and in that case, when the shares of the contesting defendant Nos.2 to 6 are not defined or decided so far, in those circumstances, the trial Court ought not to have allowed the application.

6. It is submitted that the appointment of a Court Commissioner and the posting of the matter for issuing a commission warrant amounts to proceeding with the final decree proceedings in violation of the specific orders of the High Court in RFA No. 2425/2023 and RFA No. 2471/2023, wherein it was expressly directed that a final decree shall not be drawn without the leave of the Court. It is submitted that the appointment of a commissioner is a step towards drawing



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the final decree and is thus in breach of the Court's orders. It is also submitted that the appointment of a Court Commissioner under Order XXVI Rule 13 of the CPC for the purpose of effecting actual fiscal demarcation and division of properties is not a preliminary or interlocutory step, but is the essence and substratum of final decree proceedings. Once a commissioner is appointed to demarcate specific shares, the inevitable consequence is the drawing of the final decree based on such demarcation. By allowing the appointment of the commissioner, the trial Court has effectively permitted the final decree proceedings to proceed to their logical conclusion, thereby rendering the High Court's order granting a stay on the drawing of the final decree wholly nugatory and meaningless. It is submitted that the trial Court has committed a grave jurisdictional error. It is submitted that a Court Commissioner cannot be appointed to demarcate the share unless the shares of all parties are specifically defined and determined in the preliminary decree. Permitting demarcation of the petitioner's share, where the shares of defendant Nos.2 to 6 remain undetermined, is not only legally impermissible but also



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physically impossible. It is submitted that, when objections were raised, the trial Court allowed the application without considering the objections raised by the petitioner herein.

7. The applications are filed by the respondents for vacating the stay. Learned counsels appearing for the respondents submit that the trial Court had rightly considered and passed an order. It is submitted that the order passed by the trial Court is in conformity with the orders passed by this Court in RFA, and that the appointment of a Court Commissioner will not amount to a drawing up of the final decree. The submissions made before the Court are contrary to law. It is further submitted that, because of the stay granted by this Court, the entire proceedings are stayed, and hence the stay may be vacated.

8. In the light of the submissions made by the learned Senior counsel for the petitioner and the learned counsels representing the respondents, the issue that falls for consideration before this Court is

***"whether the appointment of a commissioner under Order 26 Rule 13 of the CPC is in violation of the interim order directing that all proceedings may***



***continue but the final decree shall not be drawn without the leave of the Court”.***

If the contention of the learned Senior counsel for the petitioner is accepted, namely that the appointment of a commissioner itself is prohibited, the consequence would be that, practically, no effective step could be taken in the final decree proceedings. The trial Court would merely adjourn the proceedings, awaiting disposal of the appeal. Such an interpretation would virtually convert the interim order into an order staying the entire final decree proceedings. Had it intended to stay the proceedings in their entirety, nothing prevented the Court from directing that further proceedings in the final decree proceedings shall remain stayed. Instead, the Court consciously permitted continuation of all proceedings while withholding only the ultimate act of drawing the final decree.

9. The distinction between continuation of proceedings and drawing of the final decree cannot be ignored. Order 26 Rule 13 of the CPC enables the Court to appoint a Commissioner for the purpose of partition in accordance with the preliminary decree. The Commissioner neither adjudicates



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the rights nor finally partitions the property. His functions are essentially ministerial and investigative. He measures the properties, prepares a sketch, suggests a mode of partition having regard to the shares already declared under the preliminary decree, and submits a report to the Court. The report of the Commissioner does not acquire finality merely upon his submission. The Court may accept it, reject it, remit it for fresh inquiry, direct modification, or call for an entirely fresh report. Even after acceptance of the report, the rights of the parties do not crystallize until the Court incorporates the allotments in the final decree. Therefore, the appointment of a Commissioner by itself neither affects partition nor creates enforceable rights in favour of any party. A Commissioner's report is merely an aid to the Court. The partition becomes legally effective only when the Court judicially approves a mode of partition and incorporates the same in the final decree. Until then, the report remains recommendatory. The Commissioner cannot bind the Court, nor can a party claim rights solely on the strength of the Commissioner's report. Hence, demarcation



by the Commissioner cannot be equated with drawing of the final decree.

10. The preliminary decree has already declared the parties' shares. The purpose of the final decree proceedings is only to translate the declared fractional rights into identifiable portions on the ground. Appointment of a commissioner facilitates the implementation of the preliminary decree. The commissioner's exercise does not enlarge, diminish or modify the shares declared by the preliminary decree. Even if the appeal ultimately succeeds, the commissioner's report does not become irreversible. Depending upon the Appellate Court's judgment, the trial Court would be able to modify, ignore or call for a fresh report before drawing the final decree. Hence, no irreversible prejudice is caused merely because the Commissioner proceeds with the exercise.

11. The object of permitting proceedings to continue while restraining the drawing of the final decree is that partition suits often remain pending on appeal for considerable periods. If every procedural step were halted, the parties would be compelled to recommence the entire exercise after disposal of



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the appeal, resulting in unavoidable delay and multiplicity of proceedings. By permitting the continuation of the proceedings, the Appellate Court intended that the trial Court may complete all preparatory exercises so that the matter remains ready for final adjudication. By simultaneously restraining the drawing of the final decree, the Appellate Court ensured that no executable rights come into existence pending disposal of the appeal. The submission that no commissioner can be appointed unless the shares of all the parties are first determined cannot be accepted. The shares already stand determined under the preliminary decree. The commissioner is not required to determine the rights afresh. He is only required to work out the decree already passed. If ultimately the preliminary decree is modified in appeal, the consequential changes can always be incorporated before the final decree is drawn. The mere possibility of modification cannot be a ground to prohibit the Commissioner from undertaking the exercise expressly permitted by the interim order in the pending RFA.

12. In the considered opinion of this Court, the trial Court has rightly considered and allowed the application, and this



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Court finds no reason to interfere, and the issue is answered in favour of the respondent. Hence, this Court is passing the following:

**ORDER**

- i. Accordingly, the writ petition is ***dismissed***.
- ii. All I.As. in this petition shall stand closed.

**SD/-**  
**(LALITHA KANNEGANTI)**  
**JUDGE**

MEG  
List No.: 1 SI No.: 3