HC-KAR

NC: 2026:KHC:16599
WP No. 5709 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

WRIT PETITION NO. 5709 OF 2025 (GM-CPC)

BETWEEN:

SMT. MADAMMA
W/O LATE LINGEGOWDA
RESIDING AT GARDEN HOUSE IN
SURVEY NO.229/1
MADAHALLI VILLAGE, KASABA HOBLI
GUNDLUPET TALUK-571 111

…PETITIONER

(BY SRI. MUJTABA H, ADVOCATE)

AND:

1. SRI. H.V. KUMAR
   S/O SRI. VENKATESH
   MAJOR
   RESIDING AT DOOR NO.5
   KALIDASA ROAD, KUVEMPU TRUST
   JAYALAKSHMIPURAM
   MYSURU-570 012

2. SRI. VISHNU KEERTHI M.V
   S/O SRI. M. VENUGOPAL
   AGED ABOUT 52 YEARS
   RESIDING AT DOOR NO. 1193/1
   2ND CROSS, ASHOKANAGARA
   MANDYA TOWN
   MANDYA DISTRICT - 571 401

…RESPONDENTS

(BY SRI. H.S. SHANKAR, ADVOCATE FOR R2;
R1 – SERVICE OF NOTICE IS DISPENSED WITH VIDE ORDER DTD.23.03.2026)

Digitally signed by DHANALAKSHMI MURTHY
Location: HIGH COURTOF KARNATAKA

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 17/02/2025 PASSED BY THE LEARNED PRINCIPAL CIVIL JUDGE AND J.M.F.C., AT GUNDLUPET ON I.A.NO.XI IN O.S.NO.195/2016, VIDE (ANNEXURE -A) AND ALLOW THE INTERLOCUTORY APPLICATION BEING I.A.NO.XI FILED IN O.S.NO.195/2016 BY THE PETITIONER HEREIN UNDER ORDER XXVI RULE 9 READ WITH SECTIONS 94(E) AND 151 OF THE CODE OF CIVIL PROCEDURE ON THE FILE OF THE LEARNED PRINCIPAL CIVIL JUDGE AND J.M.F.C., AT GUNDLUPET AS PRAYED FOR.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

ORAL ORDER

This writ petition is filed by the plaintiff under Article 227 of the Constitution of India, challenging the order dated 17.02.2025 passed on I.A. No. XI, filed under Order XXVI Rule 9 r/w. Sections 94(E) and 151 of CPC in O.S. No. 195/2016, by the Principal Civil Judge and JMFC, Gundlupet, whereby the application filed for appointment of the Taluk Surveyor and AEE attached to Taluk Panchayat as the Court Commissioner has been rejected.

2. The petitioner/plaintiff filed a suit in O.S.No. 195/2016 for declaration, cancellation of the sale deed and

permanent injunction. Upon appearance, the respondent/ defendant filed a written statement. Based on the pleadings of the parties, issues were framed, and the parties adduced their evidence.

3. During the cross-examination of DW1, photographs were confronted to show that the suit schedule property had not been developed. Therefore, the plaintiff filed an application under Order XXVI Rule 9 of the CPC for the appointment of a Court Commissioner.

4. During the cross-examination, the respondent/ defendant admitted that he had no objection to the appointment of a Court Commissioner to verify the nature of the property.

5. This Court, in the case of ***SRI SHADAKSHARAPPA VS. KUMARI VIJAYALAXMI AND OTHERS*** reported in **ILR 2023 KAR 3983,** has issued guidelines for the appointment of a Court Commissioner. The relevant paragraph is extracted below:

"23. In the backdrop of the discussions made above, this Court cannot lose sight of the fact that in a large number of suits before the Trial Court, the applications are filed for the appointment of a Commissioner. In other words, this is one of the frequently invoked provisions of the Code. For this reason, this Court deems it desirable to summarise the broad guidelines that can be followed while exercising the power under Order XXVI Rules 9 and 10 of the Code of Civil Procedure.

a) The power of the court to appoint the Commissioner for local inspection or any other purpose provided in Order XXVI of the Code is discretionary. However, the said discretion is guided by not only Order XXVI Rules 9 and 10 of the Code but also the provisions of the Indian Evidence Act dealing with relevancy, expert opinion, and the burden of proof.

b) The discretion to exercise the power under Order XXVI of the Code of Civil Procedure is not governed by the form of the suit. The Court can appoint the Commissioner in any kind of suit, provided a report of the Commissioner under Order XXVI of the Code is necessary for elucidating the matter in dispute.

c) The issue framed in the suit, or where the issue is not yet framed, the pleadings which give rise to

issue/s and the documents placed on record would be a guide to ascertain the 'matter in dispute' referred in Order XXVI Rule 9 of the Code

d) The power to appoint the Commissioner for local inspection or scientific investigation/expert's opinion can be invoked even suo motu by the court, without there being an application by either of the parties, if the Court deems it appropriate to secure the report of the Commissioner. However, the appropriate reasons must precede the order appointing the Commissioner. And such orders are to be passed only after hearing the parties before it.

e) The Commissioner can be appointed either before or after the commencement of the trial. However having due regard to the nature of the controversy, if the report is essential for elucidating the matter in dispute, it is desirable to have the local inspection before the commencement of trial as it is likely to reduce the volume of oral evidence in a given case.

f) In addition to the report, having regard to Order XXVI Rule 10 of the Code, the evidence taken by Commissioner reduced in writing can also be taken on record and examined by the court while considering the report.

g) The report of the Commissioner is not conclusive proof of what is stated therein. The report is only a piece of evidence, that the Court has to examine based on the other materials on record.

h) Report of the Commissioner need not be formally marked for being considered as evidence. Once submitted to the court, the report is part of the court record and can be looked into by the court.

i) The court may in its discretion examine the Commissioner on any matter concerning the report. There is no compulsion to examine the Commissioner. However, if the objection is filed to the report, and the party filing objection seeks to examine the Commissioner then the Commissioner should be examined. In either case, once the Commissioner is examined, the court having due regard to the evidence, may reject or accept the report in its entirety or in part, provided there are materials to justify such a finding on the report. In appropriate cases, the merit of the report can be considered at the final hearing. While considering the report at the final hearing, if the court finds that the report is erroneous and fresh commission is required, the court may pass appropriate order in this regard.

j) If the court is dissatisfied with the 'proceedings of the Commissioner' as found in Order XXVI Rule 10 (3), it may direct further inquiry depending on the facts. As a matter of caution, it is clarified that examination and order under order XXVI 10 (3) are only to verify if the Commissioner has followed the proper procedure while carrying out his task.

k) The person who has filed an objection to the report has the option of cross-examining the Commissioner to substantiate his objections or even without cross- examination, it is open to establish that the report is inadmissible in evidence.

5. In view of the above, the appointment of a Court Commissioner would assist the Court in effectively disposing of the suit.

6. Accordingly, the following order is passed:

(i) The writ petition is allowed.

(ii) The order dated 17.02.2025 passed on I.A. No. XI in O.S. No. 195/2016 by the Principal Civil Judge and JMFC, Gundlupet, is set aside.

(iii) The application, I.A. No. XI, filed by the petitioner/plaintiff under Order XXVI Rule 9 of the CPC, is allowed.

(iv) The trial court is directed to dispose of the suit as expeditiously as possible.

Sd/-
(H.T. NARENDRA PRASAD)
JUDGE

CM
List No.: 1 Sl No.: 54