



CNR: KAHC010172792018

NC: 2026:KHC:49296
W.P. No.42720 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 10TH DAY OF SEPTEMBER, 2026
BEFORE
THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM
WRIT PETITION NO.42720/2018 (GM-CPC)

BETWEEN:

1. MRS. NELLI
W/O LATE K. JANARDHAN
AGED 71 YEARS.
2. MRS. RATHNA
W/O LATE PADMANABHA SALIAN
AGED 69 YEARS.
3. SMT. USHA
W/O K.V. KUMARAN
AGED 67 YEARS.
4. SMT. RANI
W/O RAMESH KUMAR
AGED ABOUT 61 YEARS.
5. SMT. RAGINI
W/O RANJITH P
AGED 58 YEARS.
6. LATE SRI. RANJITH SALIAN
S/O LATE R.K. SALIAN
AGED 56 YEARS
SINCE DECEASED BY LR'S
DIED ON 07.12.2021.
- 6(a) SMT. MAMATHA SALIYAN
W/O LATE RANJITH SALIAN
AGED ABOUT 55 YEARS.

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA



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- 6(b) MR. ANSHUL SALIAN
S/O LATE RANJTH SALIAN
AGED MAJOR.

[AMENDED V/O/DTD:24.01.2025]

7. SMT. KAVITHA
W/O LATE KESARI SALIAN
AGED 57 YEARS
8. MRS. KADAMBARI
D/O LATE SRI. KESARI
AGED 32 YEARS.
9. MISS. KAVYA
D/O LATE SRI KESARI
AGED 29 YEARS.

ALL ARE R/OF
'PANCHAVATI' BEHIND RETREAT HOUSE
VALENCIA, MANGALORE.

...PETITIONERS

(BY SRI. CHANDRANATH ARIGA K, ADV., FOR P1 TO P5 & LR'S
OF P6)

AND:

1. SERVENTS OF LORD TRUST (R)
HAVING ITS OFFICE AT TOLLGATE KADRI
MANGALORE -575 002
REP. BY ITS MANAGING TRUSTEE
MR. PAUL NOEL RODRIGUES
S/O LATE EDWIN ROADRIGUES
INDIAN CHRISTIAN
ADULT, R/AT CARMEL CORNER
NEW SHIVABAGH ROAD
KADRI, MANGALORE.

...RESPONDENT

(BY SRI. CYRIL PRASAD PAIS, ADV.,)



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THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 16.8.2018 IN I.A.NO. VIII IN O.S.NO.339/2015 ON THE FILE OF II ADDL. SR. CIVIL JUDGE, MANGALURU AT ANNEX-E. ALLOW THE I.A.NO. VIII IN O.S.NO.339/2015 ON THE FILE OF THE II ADDL. SR. CIVIL JUDGE, MANGALURU & ETC.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The captioned writ petition is at the instance of the plaintiffs, who are before this Court calling in question the order passed by the learned Trial Judge rejecting I.A.No.8 filed under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC'). The application was filed seeking appointment of a Court Commissioner for local inspection to ascertain the extent of the alleged encroachment. The learned Trial Judge, referring to certain admissions said to have been elicited in the cross-examination of the plaintiffs with regard to the extent of the alleged encroachment, has proceeded to reject the application. It is this order which is called in question in the present writ petition.



2. Heard the learned counsel appearing for the petitioners/plaintiffs and the learned counsel appearing for the respondent/defendant. Perused the material on record and considered the judgments relied upon by the learned counsel appearing for both sides.

3. The plaintiffs have instituted the suit seeking the relief of possession on the specific allegation that the defendant has encroached upon the property belonging to the plaintiffs. Upon conclusion of the trial, the plaintiffs filed an application under Order XXVI Rule 9 read with Section 151 of CPC seeking local inspection for the purpose of ascertaining the extent of the alleged encroachment. The learned Trial Judge has rejected the said application primarily on the ground that the plaintiffs, in the course of their cross-examination, had admitted their ignorance regarding the precise extent of the alleged encroachment.

4. The question that arises for consideration is whether, in a suit for possession founded upon an allegation of encroachment, the application for local inspection could have



been rejected merely on the basis of certain admissions elicited in the cross-examination of the plaintiffs.

5. The law in this regard is fairly well settled. Where the plaintiff seeks possession on the ground that the defendant has encroached upon the plaintiff's property, the question of encroachment is essentially a question to be ascertained with reference to the physical features and the actual position on the spot. Such a dispute cannot, in all cases, be effectively determined merely by examining the title documents relied upon by the respective parties. The extent and nature of the alleged encroachment are matters which may require physical verification and local inspection. Therefore, in an appropriate case, appointment of a Court Commissioner for local inspection would advance the cause of justice and assist the Court in effectively adjudicating the real dispute between the parties.

6. This Court, in the reported judgment rendered in the case of ***Sri.Shadaksharappa S/O Veranna v. Kumari Vijayalaxmi and Others, W.P.NO.201274/2022*** has observed in paragraph No.21 as under:



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"21. Having examined the provisions referred to above and given the fact that Order XXVI of the Code of Civil Procedure is often invoked in the trial court, this court is of the view, broadly speaking in the following cases, the appointment of an appropriate Commissioner as provided under Order XXVI of the Code is desirable.
(i) The dispute relating to the easement of air, light, pathway, road, watercourse, etc.
(ii) The dispute relating to the boundary, encroachment;
(iii) The dispute relating to forgery;
(iv) The dispute relating to the existence or otherwise of a stream, pond, drainage, watercourse, road, pathway, pollution, or nuisance."

The aforesaid enunciation of law squarely applies to the facts of the present case. The foundation of the plaintiffs' suit is their assertion of title over the suit property coupled with the allegation that the defendant has encroached upon a portion thereof. Therefore, the precise extent and location of the alleged encroachment constitute a material issue for adjudication. Such an issue, having regard to its very nature, can appropriately be ascertained by local inspection. The physical features existing at the spot would furnish relevant material to the Trial Court in determining the dispute, whereas the title documents by themselves may not conclusively establish the extent of the alleged physical encroachment.



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7. The learned Trial Judge, however, has declined to exercise the jurisdiction under Order XXVI Rule 9 of CPC by placing reliance upon certain admissions elicited during the cross-examination of the plaintiffs. In the considered view of this Court, such admissions, particularly when the application is directed towards ascertaining the physical extent of the alleged encroachment, cannot constitute a valid ground to reject the prayer for local inspection. The fact that the plaintiffs may have expressed ignorance regarding the precise extent of encroachment is, in fact, a circumstance which lends support to the necessity for an objective local inspection rather than a ground for rejecting the application.

8. The learned Trial Judge has, therefore, proceeded on an erroneous premise and has failed to consider the nature of the controversy involved in the suit and the purpose for which the application under Order XXVI Rule 9 of CPC was filed. The admissions referred to in the impugned order do not, in the opinion of this Court, have any bearing on the necessity of ascertaining the physical features of the property and the alleged encroachment. The judgment relied upon by the



learned counsel appearing for the respondent/defendant, having regard to the facts and circumstances of the present case, has no application.

9. In that view of the matter, the impugned order suffers from an error apparent in the exercise of jurisdiction and cannot be sustained. The application filed by the plaintiffs under Order XXVI Rule 9 read with Section 151 of CPC deserves to be allowed.

For the foregoing reasons, the following:

ORDER

i. The writ petition is allowed.

ii. The impugned order dated 16.08.2018 passed on I.A.No.8 in O.S.No.339/2015 by the II Additional Senior Civil Judge, Mangaluru, is set aside. Consequently, I.A.No.8 filed by the plaintiffs under Order XXVI Rule 9 read with Section 151 of CPC is allowed.



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iii. The plaintiffs and the defendant are at liberty to furnish their respective memo of instructions before the Trial Court.

iv. The Trial Court shall appoint a Court Commissioner in accordance with law, who shall conduct local inspection and submit a report regarding the physical features and the alleged encroachment. Upon receipt of the Commissioner's report, the Trial Court shall proceed with the adjudication of the suit and pass judgment on merits, in accordance with law.

v. All contentions of the parties are kept open.

**Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE**

ABK
List No.: 1 Sl No.: 14