



CNR: KAHC010195962023

NC: 2026:KHC:46891
WP No. 8466 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE JAYANT BANERJI

WRIT PETITION NO. 8466 OF 2023 (GM-CPC)

BETWEEN:

1. SRI V.NAGARAJU,
S/O LATE VENKATARAMANAPPA,
AGED ABOUT 71 YEARS,
2. SMT. LAKSHMAMMA,
W/O V.NAGARAJU,
AGED ABOUT 64 YEARS,
3. SRI. N VENKATESH
S/O V.NAGARAJU
AGED ABOUT 41 YEARS,

ALL ARE R/AT:
NO.42/8, IMMADIHALLI VILLAGE,
HAGADUR, NEAR KARIMARAMMA TEMPLE,
NAGONDANAHALLI MAIN ROAD,
K.R.PURAM HOBLI,
BENGALURU-560 066.

...PETITIONERS

[BY SRI.GOPALA, ADVOCATE (VC)]

AND:

1. SMT H.R.SHILPA,
W/O LATE N.SATISH,
D/O H.T.RAMACHANDRAPPA,
AGED ABOUT 33 YEARS,
R/AT HUNASEHALLI VILLAGE,
VAGATA POST, JADIGENAHALLI HOBLI,
HOSAKOTE TALUK
BENGALURU RURAL DISTRICT-562 114.

Digitally
signed by K S
RENUKAMBA
Location:
High Court of
Karnataka



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2. SMT.MANJULA,
D/O V.NAGARAJU,
AGED ABOUT 45 YEARS,
R/AT NO.42/8, IMMADIHALLI VILLAGE,
HAGADUR, NEAR KARIMARAMMA TEMPLE,
NAGONDANAHALLI MAIN ROAD,
K.R.PURAM HOBLI,
BENGALURU-560 066.

...RESPONDENTS

[BY SRI.N.S.BHAT, ADVOCATE FOR R1;
NOTICE TO R2 D/W VIDE ORDER DATED 19.04.2023]

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI TO SET ASIDE THE IMPUGNED REJECTED ORDER DATED 27.03.2023 PASSED BY THE LEARNED IV ADDL. SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU ON IA NO.17 FILED BY THE PETITIONERS UNDER ORDER 26 RULE 9 OF THE CODE OF CODE PROCEDURE FOR APPOINTMENT OF COMMISSIONER TO RECORD CROSS EXAMINATION OF D.W-1 AT HIS HOME IN O.S.NO.1157/2020 AT ANNEXURE-A AND TO ALLOW THE APPOINTMENT OF COMMISSIONER APPLICATION FILED UNDER ORDER 26 RULE 9 OF CPC THEREIN VIDE ANNEXURE-D ETC.

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

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI

ORAL ORDER

Heard Sri. Gopala, the learned counsel for the petitioners and Sri. N.S. Bhat, learned counsel for the Respondent No.1.

2. This petition is filed by the defendants 1, 2 and 4 for setting aside, the order dated 27.03.2023 passed by the IV



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Additional Senior Civil Judge, Bangluru Rural District, Bengaluru, on IA No.17 filed by the petitioners under Order XXVI Rule 9 of Civil Procedure Code, 1908¹ for appointment of Commissioner to record cross-examination of DW1 at his home in O.S.No.1157/2020 and to allow the application for appointment of Commissioner. It appears that the plaintiff/respondent No.1 filed a suit seeking partition of the suit schedule property and to put the plaintiff in separate possession of her legitimate 1/4th (one fourth) share, for mesne profit and of consequential permanent injunction. A written statement was filed by the defendants.

3. By the order impugned, the trial Court records that the stage is for cross-examination of DW1, who is absent. But, the counsel for defendants and the plaintiff who are present. The IA under Order XXVI Rule 9 of the CPC was filed for appointment of Commissioner to examine DW.1 at his home, as he was unable to reach the Court to give evidence due to ill health. The counsel for the plaintiff opposed the IA by contending that the DW.1 is hale and healthy and not suffering

¹ CPC



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from serious illness and rejection of the application was sought. The court recorded that the defendants were in the habit of filing IAs one after the other. This indicated their intention not to progress with the case and they want to derail the progress of the case. The Court had seen the DW.1 physically present many times. But, when the stage for his cross-examination came, he allegedly developed ill health. The court noticed that even the earlier medical certificate indicated that the DW.1 suffered from regular old age ailment and was also treated as out-patient. Finding lack of bona fide in moving the application, and that it would take a long time to examine the witness if a commissioner is appointed, therefore the IA was rejected.

4. In his submission, learned counsel for the petitioners sought to place Order XXVI Rule 4(A) of the CPC that gives a Court the right to issue commission in any suit for the examination, on interrogatories or otherwise, of any person resident within the local limits of its jurisdiction, and the evidence so recorded would be read in evidence. He states that the defendant no. 1 is over 70 years of age and he suffers from



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ill-health. Therefore he is not able to attend the court to record his deposition in cross-examination.

5. When queried by the Court as to the medical prescription and bills of medicines, the learned counsel for the petitioners has referred to Annexure-E. Annexure-E is a memo, which seeks permission of the Court to produce the original medical bills and prescription in the above case. No bills or medical prescription is appended to the memo. In paragraph 10 of the petition, it is stated that the trial Court had directed the defendants to submit medical bills and prescriptions, and posted the case for 25.03.2023. On that day, the counsel for the defendants filed memo with medical certificate of DW1.

6. When the sole basis of seeking appointment of a Commissioner was the ill-health of the DW1, it was for the petitioners to have produced the necessary documents for perusal of this Court to evince the medical condition of DW.1, which has not been done. It was the best evidence of the petitioners before this Court. Moreover, this petition was filed on 11.04.2023. Due to an interim order passed by this court, the suit proceedings are held up. There is no material before



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the Court to demonstrate that the medical condition of DW.1 would disable him from appearing before the Court to record his cross-examination.

7. This petition is therefore dismissed with a direction to the trial Court to proceed with the cross-examination of DW.1.

8. The DW.1 shall remain present in Court for his cross-examination.

9. The parties, since they are represented, shall appear before the Court for recording of testimony on 22.09.2026.

10. The office is directed to communicate this order to the concerned trial Court, within a week from today.

**Sd/-
(JAYANT BANERJI)
JUDGE**