



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JULY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 9215 OF 2026 (GM-CPC)

BETWEEN:

1. VENKATASWAMAPPA
SINCE DECEASED BY HIS LRS
V.BYANNA
AGED ABOUT 57 YEARS
SON OF LATE VENKATASWAMAPPA
2. SRINIVAS.V.
AGED ABOUT 53 YEARS
SON OF LATE VENKATASWAMAPPA

PETITIONER NO.1 AND 2 RESIDING AT
NO.22, 4TH CROSS, PWD ROAD,
3RD PHASE, BSK III STAGE,
BANGALORE-560 085
3. SUJATHA.V.
AGED ABOUT 51 YEARS
D/O LATE VENKATASWAMAPPA
VKB MARAMMA TEMPLE STREET,
NEAR MARAMMA TEMPLE,
HULIMAVU, BANNERGHATTA ROAD,
BANGALORE-560 076
4. MANJULA.V.
AGED ABOUT 48 YEARS
D/O LATE VENKATASWAMAPPA
NO.9, 7TH MAIN, 2ND CROSS,
NEAR KAMAKYA SYNDICATE BANK
COLONY, HOSAKEREHALLI,
BANGALORE-560 085.

...PETITIONERS

(BY SRI. B.R.VISWANATH, ADVOCATE)



AND:

SMT.CHOWDAMMA
MAJOR
WIFE OF KRISHNAPPA
NO.85, I CROSS,
KETHAMARANAHALLI, RAJAJINAGAR,
BANGALORE-560 010

...RESPONDENT

(BY SRI.T.SHESHAGIRI RAO, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING ANNEXURE-F ORDER PASSED ON 26.02.2026 ON IA NO. 1/2026 IA NO. 1 IN EXECUTION CASE NO. 112/2024 BY THE III ADDL. CITY CIVIL AND SESSIONS JUDGE BENGALURU.

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

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

ORAL ORDER

Aggrieved by the order dated 26.02.2026 passed in I.A.No.1/2026 in Execution Petition No.112/2024 by the III Additional City Civil and Sessions Judge, Bengaluru, the Judgment Debtors are before this Court.

2. The respondent herein has filed the execution petition seeking the execution of the judgment and decree, which had attained finality. The Suit is for declaration and recovery of possession. Earlier, the petitioners had filed an



application for appointment of a commissioner. That came to be allowed. Against that, a writ petition was filed and the order was modified, whereby, Court had directed for appointment of a commissioner so as to measure 'B' schedule property from the remaining portion of 'A' schedule property and identify the limits of 'B' schedule property and hand over possession to the Decree Holder. Subsequently, the Commissioner was appointed, and he has filed the report. The petitioners herein have filed objections to the report. It is the grievance that the surveyor, instead of measuring and reporting the actual measurement boundaries and topography of the sub-schedule property, has simply superimposed the schedule property at the behest of the decree holder. It is the case that the survey is not in accordance with the actual existence of the properties and the surveyor has assumed the existence of A and B schedule properties and has not correctly recorded the existence of the properties. It is further stated that on the eastern side of the A schedule property, no property exists other than the road. The same has not been mentioned in the sketch. The road shown on the southern side has no existence. Newly formed road by the BDA is in existence. It is stated that non-mentioning of the



road formed by the BDA in the sketch amounts to improper depiction of the topography. It is stated that the survey is based on the assumption of the existence of Schedule B property on the eastern side of the Schedule A property, which is being seriously disputed. It is stated that the road is not running on the southern side of the suit schedule property or Sy.No.3, which is running on the north-eastern side as per the sketch. It is the case of the judgment debtors that the survey is not in accordance with the law and norms. Hence, they wanted to cross-examine the surveyor. That application came to be rejected by order impugned.

3. The Executing Court, while rejecting the application, observed that since this is an execution petition and the matters have already been adjudicated, there are no grounds to allow the I.A. The observation was made by the Court in para Nos. 12, 14, 15, 17, 20, 21 of the judgment in O.S. No. 677/2009. Therefore, the Court, being the Executing Court, cannot go beyond the decree. The JDR's point for summoning the commissioner was already observed in the judgment and decree. DHR is about 89 years of age, and the decree is of the



year 2009. Therefore, the JDR has not made out sufficient grounds. Accordingly, the I.A. was rejected.

4. Learned counsel for the petitioners submits that the Executing Court only on the ground that DHR is aged rejected the application. He relied on the judgment of the Co-ordinate Bench of this Court in ***Sri Shadaksharappa Vs. Kumari Vijayalaxmi and other*** arising out of ***W.P.No.201274/2022(GM-CPC)*** dated ***24.01.2023***. He relied on paragraph number 20(H,I,J), which reads as follows:

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.

Relying on this, it is submitted that when the petitioners have disputed the Commissioner's report, they have every right to cross-examine.

5. Learned counsel appearing on behalf of the respondent submits that the Court has rightly held that all the issues raised by the petitioners before the Court are already decided in the suit, and the executing court cannot go beyond the decree. It is submitted that the petitioners are filing one application after the other only to drag on the proceedings. It is submitted that he has already filed objections to the commissioner's report, and the court will consider the same while passing the order. There is no necessity to cross-examine the commissioner, and the court has rightly dismissed the application.



6. Having heard the learned counsels on either side, perused the material on record. The judgment and decree have attained finality and are affirmed by the Apex Court. In the execution petition, the petitioners have sought the appointment of an advocate commissioner. The commissioner was appointed, and the counsel for the petitioner drew the attention of the court to the sketch and the report of the commissioner. Learned counsel pointed out a discrepancy in the report regarding the boundaries. It is submitted that there is a road on the southern side, and the topography was not properly appreciated by the surveyor, and as such it is necessary to cross-examine the surveyor. Learned counsel submits that, as per the sketch, the road exists on the southern side. In the light of the submissions made by both the parties, particularly the submission of learned counsel for the petitioner that the survey was not conducted as per the sketch, and in the light of the sketch placed before the court, there appears to be some confusion which can be clarified by cross-examining the commissioner. This Court is of the view that the cross-examination of the surveyor is very much necessary in the facts



and circumstances of the case. In that view of the matter, this Court is passing the following:

ORDER

- i. Accordingly, the writ petition is ***allowed*** by setting aside the order dated 26.02.2026 passed in Execution petition No.112/2024.
- ii. The petitioners shall proceed to cross-examine the commissioner/surveyor and shall not seek unnecessary adjournments.
- iii. All pending I.As., in the writ petition shall stand closed.

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