



CNR: KAHC010207992022

NC: 2026:KHC:47091
WP No. 9270 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 9270 OF 2022 (GM-CPC)

BETWEEN:

1. SMT BENNY D SOUZA
W/O MR ANTONY D SOUZA
AGED ABOUT 69 YEARS
RESIDING AT NO 334/17 (1)
FATHIMA HILLS PACHANADY BONDEL
MANGALORE 575 008
2. SRI OSWALD D SOUZA
S/O LATE SIMON D SOUZA
AGED ABOUT 64 YEARS
RESIDING AT NO 3-34/15
FATHIMA HILLS PACHANADY BONDEL
MANGALORE - 575 008
3. SMT IRENE D SOUZA
D/O LATE SIMON D SOUZA
AGED ABOUT 57 YEARS
RESIDING LAVENDER
FLAT NO.103 GUTHIGE GARDEN
PACHANADY
MANGALORE - 575 008
4. SRI STANSILAUS ALEX D SOUZA
@ STANY D SOUZA
S/O LATE SIMON D SOUZA
AGED ABOUT 67 YEARS

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by
ANNABURNA G
Location: High
Court of
Karnataka



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RESIDING AT NO 3- 34/15
FATHIMA HILLS, PACHANADY
BONDEL, MANGALORE - 575 008

REPRESENTED BY THEIR GPA HOLDER
MR. ANTONY D SOUZA
RESIDING AT NO.3-34/17 (1) FATHIMA HILLS
PACHANDY BONDEL
MANGALORE - 575 008
NOT CLAIMING ANY SENIOR CITIZEN BENEFIT

...PETITIONERS

(BY SRI. K. SRIHARI, ADVOCATE)

AND:

1. SMT BRIDGIT D SOUZA
W/O LATE PAUL D SOUZA
AGED ABOUT 87 YEARS
RESIDING AT PILIKUMERI HOUSE
KUDUPU VILLAGE AND POST
MANGALORE - 575 028

2. SMT LUCY D SOUZA
W/O LATE CHARLES D SOUZA
AGED ABOUT 82 YEARS
RESIDING AT PILIKUMERI HOUSE
KUDUPU VILLAGE AND POST
MANGALORE - 575 028

...RESPONDENTS

(BY SRI. ROHITH B.J., ADVOCATE FOR R1
R2 - SERVED)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO CALL FOR
RECORDS PERTAINING TO THE IMPUGNED ORDER DATED



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12.04.2022 PASSED IN O.S.NO.1196/2018 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE, MANGALURU, DAKSHINA KANNADA ETC.

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

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This writ petition is filed challenging the order dated 12.04.2022 passed on I.A.Nos.6 to 10 in O.S.No.1196/2018 by the Principal Civil Judge, Mangaluru, Dakshina Kannada (hereinafter referred to as the 'trial Court' for short).

2. Heard Sri K. Srihari, learned counsel for the petitioners and Sri Rohith B.J., learned counsel for respondent No.1.

3. The petitioners filed a suit in O.S.No.1196/2018 seeking judgment and decree for possession with regard



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to the plaint 'C' schedule properties. The contention of the petitioners/plaintiffs in the suit is that the plaintiffs are the owners of land measuring 5.25 acres in Survey No.132/3 and 11 cents in Survey No.132/2, and the defendants are the owners of land measuring 4.37 acres in Survey No.132/1 and 13 cents in Survey No.132/5, and the defendants have encroached upon the plaint 'C' schedule property of the plaintiffs. The records indicate that the application filed for appointment of a Court Commissioner to measure the suit schedule properties came to be allowed by the trial Court. Thereafter, the defendants filed I.A.No.10 under Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC') seeking change of the surveyor on certain grounds. The trial Court recorded the reasons and, accepting the contention of the defendants, allowed the application vide order dated 12.04.2022 directing the Tahsildar, Mangaluru Taluk, to depute another surveyor, as referred to in the impugned order,



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for the purpose of local inspection, as ordered while appointing the Court Commissioner.

4. The contention of the learned counsel for the petitioners is that the petitioners/plaintiffs had filed I.A. Nos.6 to 9 seeking certain prayers which are akin to the prayers sought in the present application. The plaintiffs filed I.A.No.6 under Section 151 of the CPC seeking permission to videograph the entire commission and survey work, I.A.No.7 under Section 151 of the CPC seeking a direction to the Commissioner and Surveyor to strictly survey the land as per the Field Measurement Book (for short, 'FMB') and mark the encroachment and I.A.No.8 under Section 151 of the CPC seeking to fix the survey stones as per FMB, maintained by the revenue authorities and I.A.No.9 under Section 151 of the CPC seeking to reject the objection filed by the defendants opposing the videographing of the commission and survey work. It is contended that the said applications were never considered by the trial Court and only the application



I.A.No.10 under Section 151 of the CPC filed by the defendants to change the surveyor was considered and accordingly allowed.

5. It is to be noticed that I.A.No.10 under Section 151 of the CPC filed by the defendants seeking to change the surveyor was based on assertions of certain facts, which have been recorded by the trial Court under the impugned order dated 12.04.2022, and then application came to be allowed. The contention of the petitioners/plaintiffs is that the changed surveyor is required to follow certain standard norms while conducting the survey, by fixing the stone slabs from the starting point of the survey to the ending point and by making proper measurement, and that the said measurement should be based on the FMB records. It is needless to observe that the appointed surveyor is required to follow the aforesaid procedure by temporarily putting up the slabs from the starting point till completion of the survey and thereafter carry out the survey in the presence of



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plaintiffs and defendants. It is also needless to further observe that the survey should be conducted based on the starting point admitted by the plaintiffs and defendants and the same should be based on the survey records.

6. With the aforesaid observations, I am of the view that permitting the petitioners to videograph the survey process may not be appropriate, as the surveyor is required to conduct the survey as observed supra in the presence of the parties.

7. Hence, I proceed to pass the following:

ORDER

- i) The writ petition is ***disposed of***.
- ii) The impugned order dated 12.04.2022 passed on I.A.Nos.6 to 10 in O.S.No.1196/2018 by the Principal Civil Judge, Mangaluru, Dakshina Kannada, is affirmed.



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- iii) The appointed surveyor shall conduct the survey in the presence of the plaintiffs and defendants on the given date. The survey shall be conducted as per the survey records available in the department. If need arises, the survey may also be conducted physically as well as digitally.
- iv) If the survey report goes against either of the parties, it is open for them to raise appropriate objections before the trial Court in accordance with law.

No order as to costs.

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

SHS
List No.: 1 Sl No.: 24