



CNR: KAHC010212592023

NC: 2026:KHC:46828
WP No. 9487 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. 9487 OF 2023 (GM-CPC)

BETWEEN:

1. SRI S.M.BASAPPA,
S/O LATE S.P.MAHADEVAPPA,
AGED ABOUT 46 YEARS,
2. SMT S.M.CHINNAMMA,
W/O LATE S.P.MAHADEVAPPA,
AGED ABOUT 70 YEARS,

REP. BY HER SON AND GPA HOLDER
S.M.BASAPPA,
S/O LATE S.P.MAHADEVAPPA,
AGED ABOUT 46 YEARS,

BOTH ARE R/AT:
KANOOR VILLAGE AND POST,
VIRAJPET TALUK KODAGU-571 216.

...PETITIONERS

(BY SRI AKARSH KUMAR GOWDA, ADVOCATE)

AND:

1. SRI K.K.AIYAMMA,
S/O LATE KARIAPPA,
SINCE DECEASED REP. BY HIS LRS.

SMT K.A.PARVATHY,
W/O LATE K.K.AIYAMMA,
AGED ABOUT 90 YEARS,
2. SMT K.A.LEELA,
D/O LATE K.K.AIYAMMA,
AGED ABOUT 65 YEARS,
3. SRI K.A.NANDA KARIAPPA,
S/O LATE K.K.AIYAMMA,
AGED ABOUT 63 YEARS,

Digitally
signed by K S
RENUKAMBA

Location:
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4. SMT K.A.SHAILA,
D/O LATE K.K.AIYAMMA,
AGED ABOUT 60 YEARS,
5. SMT K.A.VIMALA,
D/O LATE K.K.AIYAMMA,
AGED ABOUT 58 YEARS,

RESPONDENT NOS.1 TO 5 ARE
R/AT: KANOOR VILLAGE AND POST,
VIRAJPET TALUK, KODAGU-571 216.

...RESPONDENTS

(BY SRI SACHIN B.S., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT OR DIRECTION TO QUASH THE ORDER DATED 30.07.2022 MADE ON IA NO.IX IN O.S.NO.38/2018 ON THE FILE OF THE CIVIL JUDGE AND JMFC, PONNAMPET, VIDE ANNEXURE-E 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 the learned counsel for the parties.

2. This petition is filed seeking setting aside of the order dated 30.07.2022 made on IA No.IX in OS No.38/2018 on the file of the Civil Judge and JMFC, Ponnampet. By the impugned order, the IA No.IX filed by the plaintiffs under Order XXVI Rule 9 and 10A of the Civil Procedure Code, 1908¹ has been rejected.

¹ CPC



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3. It appears that a suit for possession was filed by the plaintiff seeking a decree for recovery of possession of suit Schedule 'B' properties from the defendants by ordering the defendants to hand over the possession of the same to the plaintiffs, and on his failure, to recover the same from him. Further, a decree of permanent prohibitory injunction was sought.

4. A written statement was filed by the defendants/ respondents.

5. An application under IA No.IX was filed before the trial Court under Order XXVI Rule 9 and 10A of the CPC seeking appointment of any one of the surveyor attached to the ADLR Office and Tahsildar Office of Virajpet Taluk as Court Commissioner to survey and find out the boundary and encroachments in suit schedule 'A' properties.

6. Objections were filed to the IA. It was stated therein, *inter alia*, that, in Paragraph-6 of the plaint, the hadbast survey was done and encroachment of 'B' schedule properties by the defendant were demarcated. It was stated that the plaintiff had filed the suit on the specific averments of



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survey and demarcation. Therefore, he cannot again seek survey of the properties.

7. The counsel for the petitioners has further stated that the Schedule 'B' properties are part of Schedule 'A' properties and therefore, a demarcation has to be made by the surveyor and as held by the aforesaid judgments of this Court, it was essential to appoint a surveyor to bring on record before the court the correct facts.

8. Learned counsel for the petitioners has relied upon judgments of this Court in ***Shadaksharappa Vs. Kumari Vijayalakshmi and Others dated 24.01.2023 in Writ Petition number 201274/2022*** and the judgment of this Court in ***Bhimappa Rayappa Chougala Vs. Shrikant***², to contend that an application made under Order XXIX Rule 9 and 10A of the CPC, ought to be allowed.

9. Learned counsel for the respondents has referred to the Paragraph-6 of the plaint to contend that a Hadbast survey has already been made by the office of the Tahsildar and the

² 2014 SCC Online Kar 12277



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application was filed only to delay the outcome of the case.

Therefore, the IA-IX deserves to be rejected.

10. Paragraph-6 of the plaint reads as follows:-

6. That the first plaintiff after accepting the said gift deed from his mother on 16-11-2016 has got done the Hadbust survey of the suit schedule – A properties. That in the said Hadbust survey report, the surveyor has clearly demarcated that the defendant has encroached 20 cents of sagu bane land in Sy.No.28/6 and 5 cents of sagu bane land in Sy.No.28/3 of Kanoor village i.e. the suit schedule-B properties.

11. Therefore, there is a clear admission made by the plaintiff that a Hadbast survey of suit Schedule 'A' properties was got done on 16.11.2016. And in that Hadbast survey report, the surveyor had clearly demarcated that the defendant has encroached 20 cents of sagu bane land in Survey No. 28/6 and 5 cents of sagu bane land in Survey No. 28/3 of Kannor Village, i.e. the suit Schedule 'B' properties.

12. The counsel for the respondents would be right to contend that the suit averments would be sought to be proved by the plaintiffs/petitioners on the basis of the Hadbast survey



report that finds a mention in Paragraph-6 of the plaint. A perusal of the impugned order reflects that after relying upon the judgment of this Court in ***Bhimappa Rayappa Chougala***, the trial Court has referred to the fact that the stage is for further examination-in-chief of PW1. The parties have to complete their trial to prove their case. It is observed that if the oral and documentary evidence are not sufficient to prove the encroachment, in such circumstances, the court can appoint an expert or Commissioner. After completion of the trial if the Court comes to the conclusion that assistance of Court Commissioner is necessary, then the Court will take assistance of Court Commissioner. Accordingly the IA was rejected.

13. Though the trial Court has not considered the objections raised by the defendants/respondents and the averments made in Paragraph-6 of the plaint, the fact remains that there is an unequivocal admission made as to the existence of a Hadbast report with regard to the Schedule 'A' properties, in which alleged encroachment made by the defendants on Schedule 'B' properties, is also mentioned. It is also not denied by the learned counsel for the



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petitioners/plaintiffs that the Hadbast report reflected in Paragraph-6 of the plaint has been made by the revenue authorities.

14. Under the circumstances, this Court declines to interfere in the order passed by the trial Court. This petition is therefore dismissed.

15. The parties, since they are represented shall appear before the trial court on 29.09.2026. If on that day, the Court is not available, they shall appear on the next working day.

16. Copy of this order to be communicated to the concerned trial Court within a week from today.

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