



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JUNE, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 14443 OF 2026 (GM-CPC)

BETWEEN:

1. SRI. CHANDRA REDDY @
R. CHANDRAPPA REDDY
S/O LATE P RAMAIAH
AGED ABOUT 65 YEARS
R/AT: NO.30/2, LAKSHMI LAYOUT
NEAR SRINIVASA MEDICAL
G B PALA, KODLU
BENGALURU-560 068.
2. SRI. BABU REDDY
S/O LATE P RAMAIAH
AGED ABOUT 57 YEARS
R/AT: NO.53/1B
1ST CROSS, LAKSHMI LAYOUT
NEAR G N FLOOR MILL
GARVEBHAVIPALYA, BOMMANAHALLI
BENGALURU SOUTH
BENGALURU-560 068.

...PETITIONERS

(BY SRI. MUNIRAJA M., ADVOCATE)

AND:

1. SRI. DAMODAR NAIDU
S/O LATE D YERRISWAMY
AGED ABOUT 57 YEARS
R/AT NO.304
SRIAMETETHYST APARTMENT



KODIGENAHALLI MAIN ROAD
K.R. PURAM, BENGALURU - 560 036.

2. SMT. SUNITHA
W/O SRI KIRAN N
AGED ABOUT 38 YEARS
R/AT: NO.53/1B, 1ST MAIN
LAKSHMI LAYOUT
NEAR G N FLOOR MILL
GARVEBHAVIPALYA
HOSUR MAIN ROAD
BENGALURU SOUTH
BENGALURU - 560 068.

...RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION TO QUASH THE IMPUGNED ORDER DATED 06.03.2026 PASSED BY THE HON'BLE VI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BENGALURU (CCH-11), BY ALLOWING THE APPLICATION IA NO.2 FILED UNDER SECTION 151 OF C.P.C IN O.S.NO.7244/2024 AT ANNEXURE-A AND ETC.

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 06.03.2026 passed on I.A.No.2, in O.S.No.7244/2024 at Annexure-A, by learned VI Additional City Civil and Sessions Judge (CCH-11) at Bengaluru City, the plaintiffs are before this Court.



2. The plaintiffs/petitioners herein have filed a suit for permanent injunction. In the said suit, the petitioners have filed I.A.No.1 seeking an interim injunction, which was dismissed. When the suit was pending for framing of issues, the petitioners have filed an application in I.A.No.2 seeking the appointment of a Court Commissioner which came to be dismissed by the impugned order. Hence, the plaintiffs are before this Court.

3. The trial Court, while dismissing the application, observed that on careful perusal of the material on record, it is evident that after the defendants filed the written statement, the issues have not yet been framed and the trial has not yet commenced. At this stage, the parties have not led any evidence. Before the commencement of the trial, and without any evidence on record, the plaintiffs have filed the present application seeking the appointment of a surveyor as Court Commissioner to measure the property in the written statement.

4. The Court observed that settled law provides that a Court Commissioner cannot be appointed for the purpose of collecting evidence on behalf of a party. The parties have to



establish their respective claims by leading proper evidence before the Court. It is also relevant to note that in a suit for permanent injunction, the primary issue for consideration is the lawful possession of the suit schedule property as on the date of the suit and any alleged interference by the defendants. The question of title or encroachment to determine exact boundaries generally cannot be adjudicated in such a suit. Therefore, the parties must first lead their evidence during the course of the trial. If, after the parties have led their evidence and despite their best efforts, the Court finds that there is any ambiguity or difficulty in appreciating the evidence, the Court may consider appointing a Court Commissioner for local inspection to clarify such ambiguity.

5. The Court further observed that it is a well-settled principle of law that a Court Commissioner cannot be appointed for the purpose of collecting evidence on behalf of the parties. Particularly in a suit for injunction, the purpose of appointing a Court Commissioner is only to assist the Court in elucidating any matter in dispute and to bring the real facts before the Court, when necessary. Such an appointment can be considered only after the trial, if any ambiguity arises in the



evidence placed before the Court, and accordingly, the application was dismissed.

6. Learned Counsel appearing for the petitioners submits that at any stage of the proceedings, the Court Commissioner can be appointed. Particularly in the light of the dispute between the parties, where, according to the petitioners, there is encroachment and, according to the defendants, there is no encroachment, it is all the more necessary to appoint the Advocate Commissioner. The Court, without considering all these aspects, has dismissed the application in I.A.No.2 only on the ground that the trial has not yet commenced.

7. Learned Counsel for the petitioners has relied on the order passed by a co-ordinate Bench of this Court in **W.P.No.2362/2023, dated 24.11.2023,** in the case of **Sri. S. V. K. Patil vs. Manjunath, C.J., and others.** He relied on paragraph No. 7, which reads as under:

"7. Order XXVI Rules 9 and 10 of CPC provides for appointment of Commissioner at any stage of the proceedings to elucidate any matter in dispute between the parties. Where there is allegation of encroachment, any amount of oral or documentary evidence would not be sufficient to prove the encroachment. But to appreciate the allegation of



encroachment, getting report from the Court Commissioner would assist the Court."

8. Further, learned Counsel also relied on another order passed by co-ordinate Bench of this Court in ***W.P.No.17853/2023 dated 09.10.2023***, in the case of ***Sri.Manjunath S.C. Vs. Smt. Gangamma***. He relied on paragraph No.6, which reads as under:

"6. Therefore, this Court is of the considered view that merely appointing of Court Commissioner to measure the alleged encroachment by the respondent-defendant would not amount to decreeing the suit in favour of the petitioner-plaintiff and not amounts to collection of evidence in favour of the party to the suit. However, it would definitely aid the trial Court to decide the controversy between the parties. It is always open for the respondent-defendant to challenge the report of the Court Commissioner in the pending suit by filing objection and by cross-examining the Court Commissioner. In view of the same, keeping in mind the peculiar facts and circumstances of the case, this Court is of the considered view that the trial Court has committed error in rejecting the application filed by the petitioner-plaintiff. Hence, for the aforementioned reasons, this Court pass the following:

ORDER

The impugned order dated 04.08.2023 passed on I.A.No.XIX in O.S.No.373/2016 on the file of Principal Civil Judge and JMFC, Hosadurga, Chitradurga is set-aside and the



I.A.No.XIX filed by the petitioner-plaintiff is allowed and the trial Court is directed to appoint the Court Commissioner as sought in the application on the next date of hearing. Accordingly, the writ petition is disposed of."

9. Relying on these judgments, learned Counsel submits that the trial Court erred in dismissing the application solely on the ground that the trial is not yet commenced, and that, in light of these judgments, at any stage of the proceedings the Court Commissioner can be appointed. It is submitted by the learned Counsel that, just because the Advocate Commissioner is appointed and based on his report, the suit will not be decided. But the Court will be able to conclude whether there is encroachment or not.

10. Having heard the learned Counsel for the petitioners and perused the material on record, the suit is for a bare injunction. The petitioners have filed an Interlocutory Application seeking the appointment of a Court Commissioner to conduct a survey of the property. That application was dismissed. As on the date of the order, the issues are not framed, the trial has not yet commenced, and neither party has led its evidence. It is the submission of the learned Counsel for



the petitioners that the Advocate Commissioner can be appointed at any stage of the proceedings. Such a submission cannot be accepted.

11. This Court has perused both the orders passed by the Co-ordinate Bench of this Court, which are relied upon by the learned Counsel for the petitioners. The ratio laid down in the said judgments do not apply to the facts and circumstances of each case. In the considered opinion of this Court, before the evidence is led, the Court cannot appoint an Advocate Commissioner. As rightly observed by the trial Court, the appointment of an Advocate Commissioner is only to assist the Court in elucidating any matter in dispute and to bring the real facts before the Court. First, the parties have to discharge the burden cast upon them. Without proving their case and adducing any evidence, they cannot seek the appointment of an Advocate Commissioner, and the trial Court was right in dismissing the Interlocutory Application.

12. In that view of the matter, this Court does not find any reason to interfere with the impugned order passed by the trial Court. Accordingly, this Court is passing the following order:



ORDER

- (1) The writ petition stands ***dismissed***.
- (2) Dismissal of the writ petition will not preclude the petitioners to seek appointment of Advocate Commissioner at an appropriate stage. As and when such an application filed by the petitioners seeking appointment of Advocate Commissioner, the trial Court shall consider the same in accordance with law.
- (3) All I.As., in the writ petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

DL
List No.: 1 SI No.: 11