



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

WRIT PETITION NO. 15320 OF 2025 (GM-CPC)

BETWEEN:

1. SMT DHANDIGAMMA
WIFE OF LATE PATHAIAH
AGED ABOUT 86 YEARS
2. MAHALINGAIAH
S/O LATE PATHAIAH
AGED ABOUT 69 YEARS
3. DANDIGAIAH
S/O LATE PATHAIAH
AGED ABOUT 67 YEARS
4. SANNAPPA @ SANNAIAH
S/O LATE PATHAIAH
AGED ABOUT 65 YEARS
5. RAJANNA
S/O LATE PATHAIAH
AGED ABOUT 61 YEARS
6. SHIVANNA K P
S/O LATE PATHAIAH
AGED ABOUT 44 YEARS
7. NINGARAJU K.P.
S/O LATE PATHAIAH
AGED ABOUT 41 YEARS
ALL ARE R/AT KONDAPURA VILLAGE
GALAGA MAJARE, KASABA HOBLI

Digitally signed by
DHANALAKSHMI
MURTHY

Location: HIGH
COURT OF
KARNATAKA



GUBBI TALUK
TUMAKURU DISTRICT- 572 216.

...PETITIONERS

(BY SRI. SOMASHEKHARAI AH.R.P., ADVOCATE)

AND:

1. VENKATESHAIAH
S/O LATE MUNIVENKATAPPA
AGED ABOUT 61 YEARS
CHRISTIAN COLONY, GUBBI TALUK
TUMAKURU DISTRICT- 572 216.
2. SMT. VARALAKSHMAMMA
W/O. LATE VENKATAPPA
AGED ABOUT 66 YEARS
3. TRIVENI
D/O. LATE VENKATAPPA
AGED ABOUT 41 YEARS
4. MAMATHA
D/O LATE VENKATAPPA
AGED ABOUT 39 YEARS
5. SUJATHA
D/O LATE VENKATAPPA
AGED ABOUT 37 YEARS
6. GEETHA
D/O LATE VENKATAPPA
AGED ABOUT 35 YEARS
7. ASHWINI
D/O LATE VENKATAPPA
AGED ABOUT 33 YEARS
8. DIVYA
D/O LATE VENKATAPPA
AGED ABOUT 31 YEARS



ALL ARE R/AT OBALLI VILLAGE
BILIGERE GATE KASABA
GUBBI TALUK,
TUMAKURU- 572 216

...RESPONDENTS
(BY SRI.S.G.HEGDE., ADVOCATE FOR C/R1 TO R8)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 29.04.2025 PASSED ON I.A. NO. XI IN OS NO.100/2023, ON THE FILE OF THE ADDL. SR. CIVIL JUDGE AND JMFC, GUBBI UNDER ANNEXURE-Z1 AND ETC.

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

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

ORAL ORDER

1. The petitioners–plaintiffs, in the present writ petition, have called in question the order dated 29.04.2025 passed by the Additional Senior Civil Judge and JMFC, Gubbi (hereinafter referred to as the “Trial Court”) on I.A. No. XI filed under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, in O.S. No. 100/2023, whereby the application seeking appointment of a Court Commissioner came to be rejected.



2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court in the original suit.

3. The plaintiffs have instituted O.S.No.100/2023 seeking the relief of declaration and injunction. Upon service of summons, the defendants entered appearance and filed their written statement. Based on the pleadings, the Trial Court framed issues and the parties have adduced their evidence. Thereafter, the plaintiffs filed I.A. No. XI under Order XXVI Rule 9 of the Code of Civil Procedure seeking appointment of a Court Commissioner. The Trial Court, by the impugned order, rejected the said application. Aggrieved thereby, the plaintiffs are before this Court.

4. Learned counsel for the petitioners-plaintiffs contends that, in an earlier round of litigation in W.P.No.31217/2024, this Court, while dismissing the writ petition on 21.11.2024, had reserved liberty to the



plaintiffs to file an application seeking appointment of a Court Commissioner for local inspection to ascertain the existence of structures on the suit schedule property. It is contended that the defendants have constructed different houses in various portions of the suit schedule property, but the defendants have denied the same and contended that the structure exists only in part of the suit schedule property i.e. 10 guntas of land. Therefore, learned counsel for the petitioners submits that the appointment of a Court Commissioner is necessary to ascertain the factual position.

5. Per contra, learned counsel for the respondents-defendants submits that there are no specific pleadings in the plaint regarding the existence of structures over any part or whole of the suit schedule property. It is further submitted that the defendants have admitted construction only to the extent of 10 guntas and have denied the existence of any other structures over the remaining extent of the land, which is stated to be an agricultural



land. Hence, it is contended that the Trial Court has rightly rejected the application.

6. Heard learned counsel for the parties and perused the material on record.

7. The plaintiffs have specifically pleaded that all seven plaintiffs have constructed houses in different portions of the suit schedule property and have also produced photographs in support of their contention. The defendants, while admitting the existence of structures to the extent of 10 guntas, have denied the existence of structures over the remaining portion of the suit property.

8. In the earlier round of litigation, the plaintiffs had filed an application under Order XXVI Rule 9 of the Code of Civil Procedure seeking appointment of a Court Commissioner, which was rejected by the Trial Court. The said order was challenged before this Court in W.P.No.31217/2024. This Court, by order dated



21.11.2024, dismissed the writ petition with the following observation at paragraph-9:

"Hence, the writ petition lacks merit and same is dismissed. However, it is open for the plaintiffs to file an application seeking appointment of a Commissioner for local inspection to find out the structures that exist on the suit property before the Trial Court. If such an application is filed, the Trial Court shall consider the application in the light of the evidence adduced before it and if it feels necessary to appoint a Commissioner and proceed in accordance with law."

9. Thus, while dismissing the earlier writ petition, this Court had expressly reserved liberty to the plaintiffs to seek appointment of a Court Commissioner for local inspection to ascertain the existence of structures on the suit schedule property.

10. In the present case, there is a clear dispute between the parties regarding the existence of structures over the suit schedule property. While the plaintiffs assert that



structures exist in different portions of the property, the defendants admit such existence only to a limited extent.

11. In such circumstances, and in view of the liberty reserved by this Court in the earlier proceedings, this Court is of the opinion that the appointment of a Court Commissioner for local inspection would be necessary to ascertain the factual position regarding the existence of structures on the suit schedule property.

12. The Trial Court, without properly considering the aforesaid aspects and the liberty granted by this Court, has erred in rejecting the application. Appointment of a Court Commissioner would not cause any prejudice to the defendants; on the contrary, it would assist the Court in effectively adjudicating the dispute.

13. Accordingly, the following order is passed:

ORDER

a) The writ petition is allowed.



- b) The order dated 29.04.2025 passed by the Additional Senior Civil Judge and JMFC, Gubbi, on I.A. No. XI in O.S.No.100/2023 is hereby set aside.
- c) I.A. No. XI filed by the plaintiffs under Order XXVI Rule 9 of the Code of Civil Procedure is allowed.
- d) The Trial Court is directed to appoint a Court Commissioner to conduct local inspection of the suit schedule property and submit a report in accordance with law.

Sd/-
(H.T. NARENDRA PRASAD)
JUDGE

DM
LIST NO.: 1 SL NO.: 55