



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE JAYANT BANERJI

WRIT PETITION NO.16858 OF 2026 (GM-CPC)

BETWEEN:

SRI S.CHANDRAPPA
S/O SANJEEVAPPA
AGED ABOUT 69 YEARS
AGRICULTURIST
R/AT HALEKUNDOORA
KASABA HOBLI, HOSADURGA TALUK
CHITRADURGA DISTRICT-577 527

...PETITIONER

(BY SRI BHUVAN K.P., ADVOCATE)

AND:

1. SRI. BASAVARAJAPPA
S/O HANUMANTAPPA
AGED ABOUT 61 YEARS

2. NIRANJANAMURTHY
S/O HANUMANTAPPA
AGED ABOUT 56 YEARS

BOTH ARE R/AT
HALEKUNDOORA VILLAGE
KASABA HOBLI, HOSADURGA TALUK
CHITRADURGA DISTRICT-577 527

...RESPONDENTS

(BY SRI R.DEVANAND, ADVOCATE FOR
SRI G.B.MARUTHI, ADVOCATE C/R)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO ISSUE AN ORDER,
DIRECTION OR WRIT IN THE NATURE OF CERTIORARI QUASH THE
IMPUGNED ORDER DATED 15.04.2026 (ANNEXURE-A) IN



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O.S.NO.443/2023 PASSED BY THE PRINCIPAL CIVIL JUDGE AND JMFC, HOSADURGA ETC.

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

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI

ORAL ORDER

Heard learned Counsel for the petitioner and learned Counsel for the respondent.

2. Even though the matter is actually under Article 227 of the Constitution of India, the petition has been filed seeking the following reliefs:

- [a] Issue an Order, direction or Writ in the nature of certiorari quash the impugned Order dated 15.04.2026 in O.S No. 443/2023 passed by the Principal Civil Judge and JMFC, Hosadurga, as per Annexure-A and
- [b] Set Aside the impugned Order dated 15.04.2026 in O.S.No.443/2023 and thereby allow I.A.No.24 under Order 26 Rule 9 of CPC filed by the petitioner.
- [c] Pass such order appropriate writ, order of direction as this Hon'ble court deems fit to grant under the facts and circumstances of the case, in the interest of justice and equity.

3. By means of the impugned order, an application moved by the petitioner under Order XXVI Rule 9 read with Section 151 of the CPC for appointment of Court Commissioner



to make local investigation, has been rejected by the trial Court.

4. The contention of learned Counsel for the petitioner is that a suit was filed seeking declaration of title of the plaintiff and a mandatory injunction directing removal of the encroachments made by the defendants/respondents over the property of the plaintiff.

5. The contention is that earlier an application was moved by the plaintiff seeking appointment of a Court Commissioner which was allowed by the Court and a report was submitted. The report was objected to by the plaintiffs.

6. It is stated that the Court Commissioner was subjected to elaborate cross examination which finds notice in paragraph No.14 of the impugned order of the trial Court. It is submitted that since the report of the Court Commissioner was vague and incorrect, a fresh application, that is I.A.No.XXIV, was moved by the plaintiff for appointment of yet another Court Commissioner. However the trial Court without examining the matter in the correct perspective has rejected the application.



7. Learned Counsel for the respondents have opposed the petition on the ground that the matter is engaging the attention of the trial Court and arguments on merits have commenced after leading of the entire evidence has been completed. This fact is not disputed by learned Counsel for the petitioner.

8. Paragraph No.14 of the impugned order reads as follows:

"14. In this case earlier on the application made by the plaintiff himself this court had appointed the Panchayath Development Officer of Anivala Grama Panchayath as court commissioner. Accordingly, the said court commissioner had executed his work and submitted report. Prima-facie the said report appears to be favouring in the defendants to the extent that the defendants have not encroached upon the property of plaintiff. As such, the plaintiff has filed objections to the application and subsequently also conducted Cross-examination of the court commissioner examined as CW-1. It is to be noted that pertaining to execution of work, the court commissioner was cross-examined to the considerable length of time. His cross-examination runs to 21 pages with 30 paragraphs. Further both the parties have addressed arguments on merits of the suit itself and both learned counsel have highlighted about the discrepancies in the report of the court commissioner as well as observation made by the court commissioner



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favouring either of the parties. Under the circumstance, the plaintiff taking stand that court commissioner has executed the work riddled with errors and omissions. It is also alleged by the plaintiff that the report is influenced by extraneous considerations of local affiliations thereby failing the test of objectivity and fairness. Further, the reasonable earlier court commissioner appointed was the local authority of same village panchayath also raises reasonable apprehension of bias and conflict of interest.”

9. On perusal of paragraph No.15 and subsequent paragraphs of the order of the learned trial Court it is evident that due attention is given and proper analysis has been made by the trial Court while rejecting I.A.No.XXIV. The Court has noticed that both parties have addressed arguments on merits of the suit itself and both the learned Counsel have highlighted about the discrepancies in the report of the Court Commissioner as well as observations made by the Court Commissioner favouring either of the parties.

10. The trial Court has observed that under the circumstances it is open for the plaintiff to address what all the defects are committed by the Court Commissioner so that the Court could come to a proper conclusion. The trial Court has correctly observed that the Commissioner's report is only a



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piece of evidence and not binding on the Court. It is not conclusive proof. When the case was posted for further arguments on merits of the suit, the plaintiff has come up with the instant application only on the ground that the Court Commissioner's Report is favouring the defendants and not the plaintiff.

11. This Court finds that the order of the learned trial Court is grounded on merit, requiring no interference. This petition is accordingly dismissed.

12. A copy of this order shall be communicated to the learned trial Court concerned within a fortnight by the Registry.

Sd/-
(JAYANT BANERJI)
JUDGE