



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JULY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 17970 OF 2026 (GM-CPC)

BETWEEN:

SMT. GANGAMMA
W/O. LATE PUTTAMALLAPPA
AGED ABOUT 75 YEARS
AGRICULTURIST
R/O HADIKERE VILLAGE AND POST
AMRUTHAPURA HOBLI,
TARIKERI TALUK
CHIKMAGALUR DISTRICT - 577 228.

...PETITIONER

(BY SRI. PRAKASH K.A., ADVOCATE)

AND:

SRI H.B.NAGARAJ
S/O. BASAPPA
AGED ABOUT 53 YEARS
AGRICULTURIST
R/O HADIKERE VILLAGE AND POST
AMRUTHAPURA HOBLI,
TARIKERI TALUK
CHIKMAGALUR DISTRICT - 577 228.

...RESPONDENT



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 27.03.2026 PASSED ON I.A.NO.VIII IN O.S. NO.60/2020 UNDER ORDER XXVI RULE 9 R/W SECTION 151 OF C.P.C BY THE LEARNED 1ST ADDL. CIVIL JUDGE AND J.M.F.C AT TARIKERE (ANNEXURE - D).

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

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

ORAL ORDER

The petitioner is aggrieved by the order dated 27.03.2026 passed in I.A.No.8 in O.S.No.60/2020 by the I Addl. Civil Judge & J.M.F.C., at Tarikere.

2. The respondent herein has filed suit for declaration of Title and recovery of possession. In that suit, the defendant who is a petitioner herein has filed an IA under Order XXVI Rule 9 read with Section 151 CPC to appoint Taluk Surveyor as Court Commissioner to measure and demarcate the lands bearing Sy.No.172/1, 172/2, 172/3, 172/4, 172/5 and 172/6 belonging to the plaintiff and his family members and Sy.No.171 belonging to the defendant, with reference to



revenue records and survey maps, to note the physical features and possession, if any encroachment exists and to submit a detailed report along with a sketch/map to the Court by allowing the application. That came to be dismissed by order impugned.

3. While dismissing the application, the trial Court has observed that on perusal of the materials placed on record, admittedly the plaintiff has filed suit against the defendant to declare that the plaintiff is the absolute owner of the suit 'A' schedule property and recovery of the 'B' schedule property from the defendant. In a suit for declaration and recovery of possession, the burden of proof always lies upon the plaintiff to establish his title over the suit 'A' schedule property and encroachment of 'B' schedule property by the defendant. The trial Court has observed that the main contention of the defendant is that, the appointment of the Court Commissioner is necessary to measure the defendant property, plaintiff property and plaintiff's family member properties in Sy.No.172/1 to 172/6 and 171/1 and 171/2 which is situated adjacent to suit scheduled property and to submit the report of



the same. The trial Court has observed that the defendant property and adjacent owners properties are not subject matter of the suit and the same cannot be tenable and it is also observed that it is well settled law that, mere non-objecting the I.A by the other side is not a ground to allow the I.A, but it has to be decided on the merits. In the present case, the plaintiff has already produced a certified copy of the survey sketch in respect of the suit schedule property, which came to be marked as Exs.P11 to P13, which clearly shows that the Taluk Surveyor has already surveyed the suit schedule property and prepared the survey sketch. Hence, there is no necessity to measure the property and all adjacent lands of the suit schedule property once again. The trial Court observed that the evidence available on record is sufficient to decide the dispute between the parties. When such being the case, at this stage, if this IA is allowed, it is nothing but a parallel proceeding for collection of additional evidence and to fill up the lacuna of the case of the defendant. Hence, the trial Court was not inclined to allow the application and dismissed the same.



4. Learned counsel appearing on behalf of the petitioner submits that the trial Court failed to consider the application filed by the petitioner. It is submitted that the survey report placed on record was prepared before the land was acquired for road widening, and that at the present stage, after road widening, it has to be surveyed by the surveyor. This aspect was not considered by the trial Court, and the order impugned needs to be set aside.

5. Having heard the learned counsel appearing on behalf of the petitioner, perused the material on record. The affidavit filed in support of IA does not contain any of the reasons argued before this Court. Nowhere in the petition it is stated that after the acquisition of the land for road widening, there is a requirement to survey the land and for that, he has filed this application. The trial Court has rightly observed that a certified copy of the survey is already on record, which shows how the plaint schedule properties are situated. In those circumstances, the trial Court has rightly held that there is no necessity to appoint the Court Commissioner and has dismissed



the petition. This Court finds no reason to interfere. In that view of the matter, this Court is passing the following:

ORDER

- i. Accordingly, the writ petition is ***dismissed.***
- ii. All pending I.As., in the writ petition shall stand closed.

**SD/-
(LALITHA KANNEGANTI)
JUDGE**

PKN
List No.: 1 Sl No.: 12