



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JULY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO.18024 OF 2026 (GM-CPC)

BETWEEN:

SRI. N.B.SHANTHA MURTHY,
S/ O BASAPPA,
AGED ABOUT 79 YEARS,
R/O RITHARABEEDI,
NALLURU VILLAGE,
CHANNAGIRI TALUK,
DAVANAGERE DISTRICT - 577 213.

...PETITIONER

(BY SRI. SHRIDHAR NARAYAN HEGDE, ADVOCATE)

AND:

1. SMT. RUDRAMMA,
W/O LATE HALESHAPPA,
AGED ABOUT 61 YEARS,
AGRICULTURIST.
2. MANJAPPA,
S/O LATE HALESHAPPA,
AGED ABOUT 42 YEARS,
AGRICULTURIST,
RESPONDENT NO.1 AND 2 ARE
R/AT KTJ NAGAR,
DAVANAGERE TOWN,
DAVANAGERE TALUK
AND DISTRICT - 577 002.



3. SRI. KUMARA,
S/O LATE HALESHPA,
AGED ABOUT 40 YEARS,
AGRICULTURIST,
R/O KTJ NAGAR,
DAVANAGERE TOWN,
DAVANAGERE TALUK
AND DISTRICT - 577 002.
4. VEERABHADRAPPA,
S/O VEERAPPA,
AGED ABOUT 76 YEARS,
AGRICULTURIST,
R/O LINGADAHALLI VILLAGE,
KASABA HOBLI,
CHANNAGIRI TALUK,
DAVANAGERE DISTRICT - 577 213.
5. SMT.GOWRAMMA,
W/O LATE MANJAPPA,
AGED ABOUT 75 YEARS,
AGRICULTURIST,
6. SMT.MAMATHA,
W/O RAMACHANDRAPPA,
AGED ABOUT 58 YEARS,
R/AT ERAGANAHALLI VILLAGE,
CHANNAGIRI TALUK,
DAVANAGERE DISTRICT - 577 213.
7. SRI.ANNAPPA,
S/O LATE MANJAPPA,
AGED ABOUT 49 YEARS,
8. SMT. SHOBHA,
W/O BASAPPA,
AGED ABOUT 47 YEARS,
AGRICULTURIST,



9. SRI. CHITRAPPA,
S/O LATE MANJAPPA,
AGED ABOUT 45 YEARS,
AGRICULTURIST,
10. SMT.ROOPA,
W/O CHANDRAPPA,
AGED ABOUT 43 YEARS,
AGRICULTURIST,
R/AT SIRIGERE VILLAGE,
CHITRADURGA TALUK
AND DISTRICT - 577 541.
11. SRI.NAGARAJ,
S/ O LATE MANJAPPA,
AGED ABOUT 35 YEARS,
AGRICULTURIST,
12. SRI.SURESH,
S/O LATE MANJAPPA,
AGED ABOUT 39 YEARS,
AGRICULTURIST,

RESPONDENT 5, 7 TO 9
AND 11 AND 12 ALL ARE R/AT
N.GANADAKATTE VILLAGE,
KASABA HOBLI, CHANNAGIRI TALUK,
DAVANAGERE DISTRICT - 577 213.

(NOTE: NOTICE TO RESPONDENTS
4 TO 12 MAY BE DISPENSED
AS THEY ARE THE CO-DEFENDANTS
ALONG WITH THE PETITIONER)

...RESPONDENTS

THIS WP IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO I) QUASHING THE
IMPUGNED ORDER DATED 10.12.2025 PASSED BY THE
PRINCIPAL CIVIL JUDGE AND JMFC, AT CHANNAGIRI IN BY THE
PLAINTIFFS ALLOWING IA.NO.11 FILED BY THE PLAINTIFFS



NO.2/RESPONDENTS NO.2 UNDER ORDER 26 RULE 9 R/W SEC. 151 OF CPC IN O.S.NO.197/2019, WHICH IS PRODUCED AS ANNEXURE-E TO THE WRIT PETITION 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 passed on I.A.No.XI in OS.No.197/2019 dated 10.12.2025 passed by the Prl. Civil Judge and JMFC, Channagiri, the defendant is before this Court.

2. The respondents herein have filed a suit seeking a declaration that the plaintiffs are the absolute owners in possession and enjoyment of the southern portion of the suit schedule property, to cancel the sale deed dated 09.11.1966, and to grant the relief of a permanent injunction restraining the defendants from interfering with the suit schedule property.

3. The defendant has filed the written statement denying possession of the suit schedule property. In the suit, I.A.No.XI was filed by the plaintiffs seeking appointment of an Advocate Commissioner, stating that the plaintiffs have filed the suit for declaration and that the defendant has filed the written statement stating that he is in possession of the suit



schedule property. It is further submitted that during the cross-examination of D.W.1, he himself admitted that an Advocate Commissioner may be appointed. Hence, the present application, i.e., I.A.No.XI, is filed. It is stated that no harm will be caused to the defendant.

4. The Court has allowed the said application, observing that, to substantiate the plaintiffs' case, they have filed 8 documents, i.e., Exs.P.1 to Exs.P.8. The defendant has produced 3 documents, i.e., Exs.D.1 to Exs.D.3. Having gone through the oral as well as the documentary evidence, it appears that the parties cannot know the actual truth of the encroachment in the suit schedule property. This oral and documentary evidence might be relevant for establishing possession, title, payment of taxes, and for visualising what appears in this part. Therefore, in the opinion of the Court, in order to determine the alleged encroachment as alleged by the plaintiffs, the Court Commissioner should be directed to make a local investigation, measure the properties of both parties, and ascertain the same. In the absence of such local investigation, the Court cannot come to the right conclusion on the basis of the oral as well as documentary evidence available on record.



D.W.1 has also admitted during the course of cross-examination that he has no objection to the appointment of the Advocate Commissioner and for the measurement of the property. Thus, the appointment of the Advocate Commissioner is absolutely warranted, and without it the Court cannot come to the right conclusion in that regard.

5. The trial Court has relied on the judgment of this Court in the case of ***Sri Shadaksharappa S/o Eranna Vs. The Commissioner City Municipal Counsels, Sindhanuru¹***, wherein the High Court was pleased to issue certain guidelines for cases like the one at hand. In the light of the same, the Court has allowed the said application and has appointed an Advocate as a Court Commissioner to conduct local investigation of the suit schedule property. The Court Commissioner shall measure the property of the plaintiffs and point out the alleged encroachment, if any, in the suit schedule property, including the encroached road to it. Aggrieved thereby, the defendant is before this Court.

¹ **W.P.No.201274/2022 (GM-CPC)**



6. Learned counsel appearing for the petitioner/defendant submits that during the course of cross-examination, although the defendant admitted that the Court Commissioner can be appointed, that admission cannot be the basis for the Court to appoint the Court Commissioner. It is submitted that the Court Commissioner has now been appointed to find out who is in possession of the property. Such an exercise is impermissible. In that regard, he relied on several judgments.

7. He has relied on the judgment of the High Court of ***Himachal Pradesh at Shimla in the case of Ram Nath and Another Vs., Kuldeep Singh and Others²***, wherein at paragraphs 10, 11, 12, 13, 14 and 15, it is held as under:

"10. It is settled principle of law that he who alleges has to prove. As it is the plaintiffs who have approached the Court praying for a decree of possession through removal of superstructure raised by the defendants upon the suit land with the allegation that the suit land stood encroached upon by the defendants, but obvious, onus to prove the same is upon the plaintiffs.

11. In the present case, the suit was filed in the year 2010. As I have already stated above that after recording the statements of the defendants'

² 2019 Supreme (HP) 1748



witnesses, their evidence was closed on 10.04.2018.

12. The Issue in support of which the application was filed under Order 26, Rule 9 of the Code reads as under:-

"Whether the plaintiffs are entitled for relief of possession as prayed? OPP"

In order to succeed in establishing this issue but obvious plaintiffs have to lead cogent evidence to demonstrate that the plaintiffs have some title over the suit land and the defendants are strangers to the suit land have illegally dispossessed the plaintiffs from the suit land.

13. Order 26, Rule 9 of the Code of Civil Procedure is not a panacea, which can be used by a litigant as a tool whenever litigant feels that it is not in a position to prove its case.

14. Order 26, Rule 9 of the Code inter alia provides that in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the Court may issue a commission to such person as it thinks fit directing him to such investigation and to report thereon to the Court.

15. In my considered view, primarily whenever any order is passed, under Rule 9 of Order 26 of the Code, the satisfaction has to be of the Court as to whether local investigation for the purpose of elucidating any matter in dispute is necessary or not. This satisfaction cannot be of the plaintiffs or defendants. The plaintiff or the defendant has to stand on its own legs and provisions of Order 26, Rule 9 of the Code cannot be used to garner or gather evidence for them through the Court process. This is exactly what has been held by the learned Court below by way of the impugned order. Learned Court has held and rightly so that



onus is upon the plaintiffs to prove their case and the Court cannot lend a helping hand and assist the plaintiffs to prove their case. These findings returned by the learned Court below cannot be said to be illegal as they are in consonance with the spirit of law with regard to the interpretation of Order 26, Rule 9 of the Civil Procedure Code. Plaintiffs cannot be permitted to a local commissioner appointed simply because they have not been able to lead cogent evidence to prove their case. That is not the intent of Order 26, rule 9 of the Code."

8. He relied on the judgment of Andhra Pradesh High Court in case of ***Parepally Satyanarayana Vs., Vutukuri Meeneder Goud and Another***³, wherein at paragraph No.12, it is held as under:

"12. A Commissioner cannot be appointed to find out as to who is in possession of the property. But he can be appointed to make local investigation to ascertain the facts or other material which are found in the property and to make a report in regard to that matter to the Court. The order of the lower Court was directing the Commissioner to make local inspection of the suit premises, to break open the lock provided that the petitioner is in occupation of the premises and to note down the physical features. The Commissioner filed a report mentioning that the property was identified in the presence of both the parties and he broke opened the lock and entered the suit premises and found some articles and furniture in the premises and noted the physical features. The Commissioner did not

³ 2008 1 ALD 461



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mention that the suit premises was handed over to the plaintiff. Unless he breaks open the lock, he will not be in a position to know the physical features of the malgi from outside."

9. He relied on another judgment of the Andhra Pradesh High Court in case of ***Bongu Ramulu Vs., Gudur Narender Reddy***⁴, wherein at paragraph No.7, it is held as under:

"7. In a suit for perpetual injunction, the Court has to adjudicate as to who is in actual possession of the suit property as on the date of institution of the suit on the basis of oral and documentary evidence adduced by the parties and the said function cannot be entrusted to the Advocate Commissioner."

10. He relied on the judgment of Madhya Pradesh (Indore Bench) High Court in case of ***Sapna Vs., Indore Municipal Corporation***⁵, wherein at paragraph Nos.9 and 10 it is held as under:

"9. The scope of Order 26 Rule 9 of the CPC is very limited. The Trial Court in any suit in which a local investigation is required or proper for purpose of elucidating any matter of dispute

⁴ 1998 Supreme(AP) 273

⁵ 2021 Supreme(MP) 182



may appoint a Commissioner. It is settled law that the parties are required to prove their own case by way of evidence, therefore, it is the duty of plaintiff/defendant to first give evidence in support of their case. After the evidence of parties, if Court deem it proper that any issue is requires clarification then the Court may appoint a Commissioner. The report of Commissioner is merely a piece of evidence and not binding on the Trial Court. It can be used for the purpose of appreciating the evidence came on record.

10. The Hon'ble Supreme Court has also considered the scope of Order XXVI Rule 9 and held that the provision of Order XXVI Rule 9 is to be invoked if the controversy is regarding demarcation of the land between the parties."

11. He relied on the judgment of Punjab and Haryana High Court in case of ***Arihant Jain Society Vs., Gian Kaur***⁶, wherein at paragraph No.4 it is held as under:

"4. I have fortified my opinion on the basis of judgment delivered by Hon'ble Punjab & Haryana High Court in Garcharan Singh v. Kehar Singh, 1997(1) Civil Court Cases 115 (P&H): 1996(3) RRR 673 (P&H), wherein Hon'ble Punjab & Haryana High Court held that "Possession - Question is to be determined by the Court - Such a question cannot be left on the local Commissioner". In another case Charanjit Singh v. Si-kattar Singh, 1999(3) RCR132 (P&H): 1999(3) Civil Court Cases 143 (P&H), the Hon'ble Punjab & Haryana High Court held that "local Commissioner cannot be appointed to report as to which of the party is in possession of the house in dispute because it would amount to delegate the

⁶ 2000 Supreme(P&H)1485



power of court to determine the real issue in the case."

12. He relied on the judgment of Madras High Court in the case of ***Elango Vs., Kasthuri***⁷, wherein at paragraph No.9 it is held as under:

"9. In the case of Chinnathambi and others Vs. Anjalai [2007-1-MLJ- 513], it is held thus:-

"It is well accepted principle of law that an Advocate Commissioner should not be appointed to find out the possession of the property, which has to be adjudicated only by oral and documentary evidence. Under such circumstances, the order of the lower court suffers from material irregularity and it is not in accordance with the principles laid down in the above said decisions."

The said view has been reiterated in the decisions rendered in the cases of M/s.Benz Automobiles Private Limited by its authorised person under the Companies Act, S.Ramamurthy Vs. C.Mohanasundaram and others [2003-3-MLJ-391], Meenakshi Vs. Vennila and another [2008-5-CTC-181] and Chandrasekaran and 6 others Vs. V.Doss Naidu [2006-2-LW-159]."

13. Relying on these judgments, it is submitted that the Court cannot appoint the Court Commissioner to ascertain who

⁷ 2009 Supreme (Mad)3631



is in occupation of the property, and that the impugned order is illegal and contrary to law and needs to be set aside.

14. Having heard the learned counsel appearing for the petitioner/defendant, perused the material on record.

15. The nature of the suit is the important aspect in these cases. The suit is not for bare injunction, but for a declaration, injunction, and the cancellation of the sale deed. In this case, the entire evidence has been recorded. The Court has then recorded the reasons in the order and appointed the Court Commissioner to ascertain whether there is any encroachment as alleged by the defendant. The trial Court has also relied on the judgment of this Court in ***Sri Shadaksharappa's*** case (referred supra) laying down the guidelines for appointing the Court Commissioner.

16. In this case, after the entire evidence is led, for the clarity of the Court and to adjudicate the dispute between the parties, the Court has appointed the Court Commissioner to enquire into the encroachment. One of the judgments, the petitioner has referred to a suit for injunction. A suit for



injunction cannot be equated with a suit for declaration of title and injunction, which is a comprehensive suit. In the judgment of the Himachal Pradesh High Court, which the learned counsel appearing for the petitioner has relied upon, the Court has observed that the satisfaction has to be of the Court as to whether a local investigation for the purpose of elucidating any matter in dispute is necessary or not. In the facts and circumstances, the trial Court has felt that, to understand and adjudicate the dispute involved between the parties, local inspection is very much required. The Court Commissioner's report is not conclusive evidence or binding on the Court. The Court will analyze the same based on the other evidence that is led by the parties. Based on the Court Commissioner's report, the Court will not declare that somebody is the owner of the property. Even on that count, the judgments relied on by the learned counsel appearing for the petitioner will not apply to the facts and circumstances of the present case.

17. In the considered opinion of the Court, the Court, after analyzing the dispute between the parties and considering the judgment of the Court, has rightly passed an order, and



this Court finds no reason to interfere with the same.

Accordingly, this Court is passing the following

ORDER

- (i) Accordingly, the writ petition is ***dismissed***.
- (ii) All pending I.As, if any, shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE