



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 18416 OF 2026 (GM-CPC)

BETWEEN:

1. SRI M MUDDANNA,
S/O SRI. R MASTHI VEERANNA,
AGED ABOUT 84 YEARS,
NOTE: SENIOR CITIZEN BENEFIT NOT CLAIMED.
2. SRI. M SUDHIR,
S/O SRI. M MUDDANNA,
AGED ABOUT 57 YEARS.
3. SRI. M SHIVAPRASAD,
S/O SRI. M MUDDANNA,
AGED ABOUT 54 YEARS.
4. SRI. M KAILASH,
S/O SRI. M MUDDANNA,
AGED ABOUT 51 YEARS,

ALL RESIDING AT NIDHI,
NO. 483, 14B CROSS, 2ND STAGE,
2ND PHASE, WCR, MAHALAKSHMIPURAM,
BENGALURU- 560 086.

...PETITIONERS

(BY SMT ANAGHA J. PRAKASH, ADVOCATE)

AND:

SRI SYED HUSSAIN KUNHIKOYA,
S/O LATE SRI. T.M.THANGAL
AGED ABOUT 54 YEARS,
NO. 14/1 AND 14/2,



5TH MAIN, GANDHINAGAR,
BENGALURU-560 009

...RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF CONSTITUTION OF INDIA PRAYING TO SETTING ASIDE THE ORDER DATED 02.05.2025 ON IA FILED UNDER ORDER XXVI RULE 9 CPC, IN OS NO. 6368/2022 PASSED BY THE IX ADDL. CITY CIVIL AND SESSIONS JUDGE BENGALURU WHICH IS PRODUCED AS ANNEX-A AND CONSEQUENTLY ALLOW THE IA 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 in I.A. filed under Order XXVI Rule 9 and 10 of Code of Civil Procedure ('CPC') in O.S. No.6368/2022 dated 02.05.2026 by the IX Additional City Civil and Sessions Judge, Bengaluru, the plaintiffs are before this Court. The plaintiffs have filed the suit for eviction and also to deliver the vacant possession of the suit scheduled premises, to direct the defendant to carry out repairs to the schedule premises and to restore it to the original position, to pay the arrears of rent and to pay the damages and for an enquiry into mesne profits.

2. In the said suit, the present application was filed under Order XXVI Rule 9 and 10 of the CPC to appoint an Engineer to



ascertain the damages caused to the suit schedule properties and to give a report regarding the same. The said application was dismissed by the Trial Court, observing that the suit is one for ejectment and for other consequential reliefs, the entire terms and conditions between the parties are based on the lease deed itself. The Trial Court held that if at all the defendant violated the terms of the lease deed, the plaintiffs have every option to act in accordance with law. Here also, the damages caused to the scheduled property, restoring the same to its original position, internal changes in wiring, shifting of the BESCOM meter, putting up of the construction in the wall, and further blocking the access to the scheduled property are all matters for trial. If at all the plaintiffs are unable to establish these facts by producing cogent documents at the time of evidence, only then the Court can appoint the Commissioner to ascertain the damages. Therefore, the Court is of the view that entertaining the application at this stage would definitely lead to collection of evidence, and therefore, the application is not maintainable. Accordingly, the Trial Court dismissed the application.

3. Learned counsel appearing for the petitioners submits that it is well settled that, even before the commencement of



evidence, the Commissioner can be appointed if the facts and circumstances of the case so require. In this case, the property is completely closed and is under lock and key is with the defendant. As such, the petitioners/plaintiffs could not ascertain the extent of the damage to the property. Though the burden lies on the plaintiffs, given that possession is not with the plaintiffs, the appointment of an Advocate Commissioner is essential under the facts of the case, and the Trial Court failed to consider this aspect.

4. Having heard the learned counsel for the petitioners, perused the material on record. The trial has not yet commenced. The burden lies on the plaintiffs to prove the alleged damages to the property and to establish that they are entitled to all the reliefs sought. The Trial Court has observed that, at this stage, the Commissioner cannot be appointed, as it amounts to the collection of evidence. The Trial Court has also observed that, if the plaintiffs are unable to establish the facts and produce the documents at the time of evidence, the Court can appoint the Commissioner to ascertain the damages. The Trial Court has rightly passed the order and has not closed the doors to the plaintiffs from seeking the relief of appointment of a Commissioner. However, the order says that, at



this stage, it is not feasible to appoint an Advocate Commissioner. This Court does not find any reason to interfere with the well-considered order passed by the Trial Court. Accordingly, this Court is passing the following:

ORDER

- i) As rightly observed by the Trial Court, this will not preclude the petitioners/plaintiffs from coming up with an appropriate application after leading the evidence.
- ii) Accordingly, the writ petition is ***dismissed.***

All I.As. in the writ petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE