

HC-KAR



CNR: KAHC010443192026

NC: 2026:KHC:36021
WP No. 20224 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JULY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 20224 OF 2026 (GM-CPC)

BETWEEN:

1. SRI K PUNDALIKA RAO
S/O LATE E.KRISHNAPPA
H/O LATE SHARADAMMA,
AGED ABOUT 85 YEARS
OCCUPATION:TAILOR,
RESIDING AT NO.112/1,
SUBEDAR CHATRAM ROAD,
OPP. SANMAN HOTEL,
SESHASHADRIPURAM,
BANGALORE- 560 020.

...PETITIONER

(BY SRI. SHIVAPRAKASH M., ADVOCATE)

AND:

1. SRI MANJUNATH VIJAYAPPA
S/O VIJAY KUMAR,
AGED ABOUT 53 YEARS,
2. SRI.SRINIVASA MURTHY
S/O VIJAY KUMAR,
AGED ABOUT 51 YEARS
3. SMT.SUJATHA.V

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by SUVARNA T
Location: HIGH
COURT OF
KARNATAKA

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D/O VIJAY KUMAR,
AGED ABOUT 49 YEARS,

4. SRI.PRADEEP.V
S/O VIJAY KUMAR,
AGED ABOUT 44 YEARS
ALL ARE R/AT NO. 1261, 8TH MAIN ROAD,
YESHWANTPURA, K.N.EXTENSION,
BANGALORE NORTH- 560 022.

...RESPONDENTS

THIS WP IS FILED PRAYING TO A) CALL FOR THE ENTIRE RECORDS IN O.S.NO.6280/2019 ON THE FILE OF XII ADDITIONAL. CITY CIVIL AND SESSIONS JUDGE, BANGALOREB) ISSUE OF WRIT OF CERTIORARI AND QUASH ORDER ON I.A.NO.21 DATED 1/6/2026 IN O.S.NO.6280/2019 ON THE FILE OF XII ADDL. CITY CIVIL AND SESSIONS JUDGE, AT BANGALORE AND CONSEQUENTLY TO ALLOW THE APPLICATION NO.21 TO APPOINT COMMISSIONER TO ASCERTAIN MEASUREMENT AND TO CLEAR AMBIGUITY.

THIS PETITION IS 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 dated 01.06.2026 passed in I.A.No.21, at Annexure-G, in O.S.No.6280/2019, by the XII Addl. City Civil and Sessions Judge at Bengaluru (for short, 'trial Court'), the defendant is before this Court.

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2. The respondent herein has filed a suit for a bare injunction. IA No. 21 has been filed by the defendant-petitioner herein seeking the appointment of a Court Commissioner, namely the Executive Officer/Assistant Revenue Officer, with directions to conduct a local investigation, measure the Plaintiff Schedule property and the defendants' property, and the actual construction on his property, and to report the factual aspects along with a sketch, for the reasons stated in the application. The Court has dismissed the application by the impugned order.

3. The trial court, while dismissing the application, observed that the burden lies on the plaintiff to prove his possession and enjoyment of the suit-schedule property and the defendant's interference. When such is the case, measuring the property belonging to the plaintiff and that belonging to the defendant in a suit for bare junction does not arise. Apart from that, when the plaintiff approaches the Court, it is the bounden duty of the plaintiff to prove his possession and enjoyment of the suit-schedule property, as

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well as the defendant's interference with his peaceful possession and enjoyment. Even in the written statement, the defendant has not narrated any interference by the plaintiff with respect to his property. When such is the case, the nature of the suit itself casts the burden on the plaintiff to prove his possession of the suit-schedule property. In that case, measuring the property of the plaintiff and the defendant is in no way necessary to adjudicate the dispute between the parties with respect to the suit-schedule property. The Court discussed the scope of an application under Order XXVI Rule 9 and observed that when the Court deems a local investigation requisite or proper for elucidating any matter in dispute, the Commissioner can be appointed. But in the case on hand, the suit filed by the plaintiff against the defendant is based on his physical possession and enjoyment of the suit-schedule property and the defendant's interference. In those circumstances, the Court held that it is not feasible or appropriate to allow the application and accordingly rejected the same.

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4. Learned counsel appearing for the petitioner submitted that, in fact, the plaintiff has encroached upon the property belonging to the defendant. Unless and until the Court Commissioner is appointed, both properties are measured, and the report is placed before the Court, the true facts will not come to light. Further, if this exercise is not done, it would unnecessarily lead to multiplicity of proceedings. It is admitted that the defendant is about 80 years of age and is a senior citizen. Considering all these facts, the Court ought to have allowed the application. It is submitted that the Court observed that the petitioner-defendant ought to have filed a counter claim. It is further submitted that, even without a counter claim, the petitioner can make such an application in the interest of justice and to arrive at a just and reasonable conclusion. The Court ought to have appointed the Court Commissioner.

5. Having heard the learned counsel for the petitioner. Perused the material on record. The trial is complete, and the matter is now coming up for arguments

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before the trial Court. At this stage, the defendant has filed the present application. According to the defendant, there is an attempt of encroachment by the plaintiff on the defendant's property, and the properties of the plaintiff and the defendant have to be measured by appointing the Court Commissioner.

6. This Court is of the considered view that the trial Court has rightly held that the suit is one for a bare injunction, wherein the burden lies upon the plaintiff to establish that he is in lawful possession of the suit schedule property and that the respondent is interfering with such possession. The trial Court has also rightly observed that there is no necessity to measure the defendant's property for the purpose of ascertaining the alleged encroachment or interference in a suit of the present nature. The trial Court has considered the scope of Order XXVI Rule 9 of the Code of Civil Procedure and has rightly concluded that, in the facts and circumstances of the case, the appointment of a Court

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Commissioner is neither necessary nor warranted. Hence,
this Court is passing the following:

ORDER

- i. The writ petition is ***dismissed***.
- ii. All I.A's in this writ petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

AG
List No.: 1 Sl No.: 21