



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JULY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 20162 OF 2026 (GM-CPC)

BETWEEN:

SRI. B. N. NAGARAJ
S/O LATE KALLENINGAPPA,
AGED ABOUT 65 YEARS,
AGRICULTURIST,
R/O, WARD NO. 2,
BESIDE VEERABHADRAPPA SWAMY TEMPLE,
HALEPETE, BIRUR TOWN, KADUR TALUK,
CHIKKAMAGALUR-577 116

...PETITIONER

(BY SRI. HARSHA VEERANGOUDRA, ADVOCATE FOR
SRI.SHIVAPRASAD SHANTANAGOUDAR, ADVOCATE)

AND:

SRI. B.M.RUDRESH
S/O B.R MALLIKARJUNAPPA,
AGED ABOUT 40 YEARS,
AGRICULTURIST,
R/O, WARD NO. 2,
BESIDE VEERABHADRAPPA SWAMY TEMPLE,
HALEPETE, BIRUR TOWN, KADUR TALUK,
CHIKKAMAGALUR-577 116

...RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF
THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE
ORDER DATED 08/06/2026 PASSED BY THE HON'BLE III ADDL.
CIVIL JUDGE AND JMFC, KADUR ON IA NO. II IN OS NO.
295/2025 AT ANNEXURE-A AND THEREBY ALLOW THE IA NO. II



FILED BY THE DEFENDANT UNDER ORDER 26 RULE 9 R/W SECTION 151 OF CPC.

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

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

ORAL ORDER

Aggrieved by the orders passed on IA.No.2 in O.S.No. 295/2025 dated 08.06.2026, by the III Addl. Civil Judge and JMFC, Kadur, the defendant is before this Court.

2. The respondent herein has filed a suit for a permanent injunction. This is the suit of the year 2025. The defendant has filed his written statement and also filed an IA under Order XXVI Rule 9 of the CPC seeking appointment of the Court Commissioner to measure the properties of both the plaintiff and the defendant and to submit a report to the court, which was dismissed by the impugned order.

3. While dismissing the application, the trial court observed that it is a settled principle of law that a Court Commissioner cannot be appointed merely for the purpose of collecting evidence on behalf of the party. The object of local investigation under Order XXVI Rule 9 of the CPC is to enable



the court to elucidate matters in dispute and to obtain clarification regarding the physical features of the property, wherever such clarification is necessary for the effective adjudication of the disputes involved in the case. In the present case, the suit is one for permanent injunction. The principal questions for consideration are whether the plaintiff was in lawful possession and enjoyment of the suit schedule property on the date of the suit and whether there was any interference by the defendant. The parties are required to establish their respective cases by adducing oral and documentary evidence. Though the defendant has contended that the plaintiff has encroached upon a portion of his property measuring 2 feet x 80 feet and has put up construction thereon, the defendant has admittedly not filed any counterclaim seeking a declaration of title, recovery of possession, a mandatory injunction, or removal of the alleged encroachment. In the absence of such a counterclaim, the allegation of encroachment remains a matter of defence, which the defendant is required to establish by producing cogent oral and documentary evidence during the trial.



4. The trial court has observed that the request for appointment of a Court Commissioner to measure the properties with reference to the defendant's sale deed appears intended to gather evidence in support of his defence regarding the alleged encroachment and the extent of his property. Such an exercise would amount to collection of evidence on behalf of the defendants, which is not the object of Order XXVI Rule 9 of the CPC. The trial court has further observed that the defendant cannot seek appointment of an Advocate Commissioner to establish facts which he is otherwise required to prove through admissible evidence, and further, the defendant has not demonstrated any exceptional circumstances necessitating local investigation by appointment of a Court Commissioner. The trial court is of the view that the controversy involved in the present suit can be effectively adjudicated on the basis of oral and documentary evidence to be adduced by the parties during the course of trial, and accordingly dismissed the application.

5. Learned counsel appearing for the petitioner/defendants submits that, in light of settled law, a Court



Commissioner can be appointed at any stage of the proceedings. The trial court dismissed the application, holding that it was filed only for the collection of evidence. He has relied on an order passed by the Co-ordinate Bench of this Court in the case of ***Smt.Bharathi Vs. M.R. Eshwarappa Iswarappa and others***, arising out of **W.P.No.25887/2023**, dated 22.11.2023. He relied on paragraphs Nos.6, 7 and 8, which read as follows:

"6. Admittedly, the suit of the respondentsplaintiffs is one for declaration, on the allegation that the petitioner-defendant No.6 has encroached 0.04 guntas of land of the plaintiffs. When the respondents-plaintiffs alleged specifically that the petitioner-defendant No.6 has encroached their property, the respondents-plaintiffs are justified in filing I.A.No.4 under Order 26 Rule 9 of CPC, seeking appointment of ADLR of Chikkamagalur as Court Commissioner to find out encroachment. The trial Court is also justified in allowing the application and appointing ADLR as Court Commissioner to find out encroachment.

7. This Court has held that any amount of oral or documentary evidence would not be sufficient to prove the encroachment. A Co-ordinate Bench of this Court in W.P.No.201274/2022 dated 24.01.2023 had an occasion to consider Order 26 Rule 9 of CPC, to appoint the Commissioner and during the course of its order at Paragraph Nos.12, 14, 18 and 21 has held as follows:

"12. Under the provisions applicable for local inspection what is impermissible is the delegation of adjudicating power. To cite an example, if both parties claim to be in possession of the disputed property, the local inspection by the



Commissioner cannot be ordered to ascertain the possession. The question of possession is to be decided by the court. However, if one party alleges encroachment by another and another party denies such allegation, the Commissioner can be appointed to ascertain whether there is encroachment or not. In such a situation the Commissioner is appointed to find out the nature of possession. The report based on local inspection will be a handy tool to decide the case relating to encroachment. In the case on hand, the petitioner to prove his assertion of encroachment, instead of leading oral evidence of witnesses has applied for local inspection, and the same is not only permissible but also desirable.

14. The discretion, though lies with the court, as to appoint the Commissioner before the trial or after the trial, the decision must be taken with due regard to the possibility of reducing or eliminating the need to record the oral evidence of witnesses to prove an issue which could be effectively decided with the aid of the report. More often than not, in disputes relating to the existence of pathway, stream, pond, well, or disputes relating to the boundary between adjoining holders, encroachment, easement of air and light, construction of building in violation of setback rules, or relating to the authenticity of a document, signature/thumb impression to name a few by way of illustration, a report secured before the trial may cut short the trial in as much as the party relying upon the report may not examine multiple witnesses to prove the matters covered by the report. The party may simply rest his case based on his evidence and the report. In a given case, the appointment of the Commissioner before the commencement of the trial



may facilitate a focused trial. In the case of Bhimappa Rayappa Chougala v. Shrikant, 2014 SCC OnLine Kar 12277 : (2014) 2 KCCR 1652 at page 1653, the Co-Ordinate Bench of this court has held as under: "4. xxx Only if the plaintiffs can show that the defendants have encroached upon their property, they would be entitled to the relief. Any amount of oral evidence is not a substitute or sufficient to prove the encroachment. To cut short the litigation to reduce recording evidence, the trial Court in its wisdom, thought it fit to appoint a Commissioner even before the commencement of the trial. That is how the duration of the litigation could be curtailed and speedy disposal of the civil matter could be achieved." 18. For the reasons discussed above, the contention taken by defendant/respondent No.1 that the appointment of a Court Commissioner, in this case, amounts to collection of evidence does not merit consideration at all. The burden of proving the alleged encroachment is on the plaintiff. Instead of voluminous oral evidence, if the petitioner seeks to prove his contention relating to encroachment through the report of the Commissioner, the prayer for local inspection should be willingly granted unless there are justifiable reasons for the court to take a view that the local inspection is a futile exercise. For this reason, this Court is of the view that the Trial Court committed a grave error in not appointing a surveyor for local inspection.

21. Having examined the provisions referred to above and given the fact that Order XXVI of the Code of Civil Procedure is often invoked in the trial court, this court is of the view, broadly speaking in the following cases, the appointment of an appropriate Commissioner as provided under Order XXVI of the Code is



desirable. (i) The dispute relating to the easement of air, light, pathway, road, watercourse, etc. (ii) The dispute relating to the boundary, encroachment; (iii) The dispute relating to forgery; (iv) The dispute relating to the existence or otherwise of a stream, pond, drainage, watercourse, road, pathway, pollution, or nuisance."

8. In the above decision, this Court has held that when it is a case of encroachment, the burden of proving the alleged encroachment is on the plaintiff. Instead of voluminous oral evidence, if the petitioner seeks to prove his contention relating to encroachment through the report of the Commissioner, the prayer for local inspection should be willingly granted unless there are justifiable reasons for the court to take a view that the local inspection is a futile exercise.

Relying on the above judgment it is submitted that the trial court ought to have allowed the application filed by the petitioner.

6. Having heard the learned counsel for the petitioner, perused the material on record. The suit is for a permanent injunction. The petitioner herein is the defendant in the suit. The defendant has filed this application for the appointment of a Court Commissioner to measure the plaintiffs' and defendants' property and to furnish the Court Commissioner's report. In support of the IA, an affidavit is filed. It is stated that, by suppressing facts, the plaintiff has obtained an interim



injunction. It is just and necessary to appoint a Court Commissioner to inspect and measure the suit schedule property as well as the defendants' property, as entitled, as per the measurements shown in the registered sale deed dated 11.11.1994, and that, if the application is not allowed, it would cause hardship to the plaintiff.

7. This Court has perused the order passed by the trial Court and the reasons are extracted in the preceding paragraphs. The trial Court has rightly held that the application filed by the petitioner/defendant cannot be allowed. The trial Court rightly observed that the appointment of a Court Commissioner is to facilitate the Court in deciding the dispute between the parties. Now, in this case, the trial has not commenced, and the burden lies on the plaintiff to prove his case. Evidence is not adduced by both the parties in those circumstances, the appointment of a Court Commissioner is not warranted. The judgment relied on by the petitioner does not apply to the facts and circumstances of the case, and that too in a suit filed for injunction. The stage of the suit is not mentioned in the said case. In the considered opinion of this



Court, the trial Court had rightly dismissed the application, and there are no grounds to interfere with the well-considered order passed by the trial Court.

8. Accordingly, this Court is passing the following:

ORDER

- i. The writ petition is ***dismissed.***
- ii. Pending I.As in the petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

TS
List No.: 1 Sl No.: 39