



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JULY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 20778 OF 2026 (GM-CPC)

BETWEEN:

1. SRI. B.G. JAYANNA,
S/O GOVINDAPPA,
AGED 55 YEARS
2. SRI. G. KEMPEGOWDA
S/O GOVINDAPPA,
AGED 65 YEARS
(SR.CITIZEN NOT CLAIMED)

BOTH ARE R/AT BHARATHIPURA VILLAGE,
SOMPURA HOBLI, NELAMANGALA TALUK,
BENGALURU RURAL DIST. PIN - 562 111

...PETITIONERS

(BY SRI. M.B.CHANDRA CHOODA, ADVOCATE)

AND:

1. SRI. NAVEENKUMAR B.K.,
S/O LATE KAMBAIAH,
AGED 35 YEARS
2. SRI. HAREESHA.B.K,
S/O LATE KAMBAIAH,
AGED 33 YEARS
3. SRI. KAMBAIAH,
S/O NARASEGOWDA,
AGED 80 YEARS

ALL ARE R/AT BHARATHIPURA VILLAGE,
SOMPURA HOBLI, NELAMANGALA TALUK,



BENGALURU RURAL DISTRICT - 562 111

...RESPONDENTS

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO I) QUASH THE ORDER DATED 15/06/2026 PASSED ON I.A.NO.9 FILED U/O 26 RULE 9 OF CPC IN O.S.NO.428/2015 ON THE FILE OF I ADDL. CIVIL JUDGE AND JMFC, NELAMANGALA VIDE ANNEXURE-E, BY ISSUE OF WRIT OF CERTIORARI.

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 present writ petition is filed questioning the order on IA No.9 passed in OS No.428/2015 dated 15.06.2026 by the I Additional Civil Judge and JMFC at Nelamangala.

2. The petitioners herein, who are the defendant Nos.1 and 2 in the suit, have filed IA No.9 application under Order 26 Rule 9 of CPC to appoint the Court Commissioner to survey and measure the suit schedule property and submit a report. The court, by the impugned order, has dismissed the said application. While dismissing the application, the Court observed that the plaintiff had filed the suit for an injunction. He has to adduce the evidence and has to prove his case, and



at the request of the defendants, the Court Commissioner cannot be appointed; accordingly, the application is dismissed.

3. Learned counsel appearing for the petitioner submits that, when the whole dispute between the parties is with regard to the boundary, when the plaintiff has no objection to the appointment of the Advocate Commissioner, the Court ought to have allowed the application, and it would solve the dispute between the parties. But without doing so, the Court, in a hypothetical manner, dismissed the application and the same needs to be set aside.

4. Having heard the learned counsel for the petitioners, perused the material on record. The petitioners herein, are the defendant Nos.1 and 2 in the suit. The respondent/plaintiff has filed a suit for permanent injunction. When the plaintiff has come to the Court seeking a particular relief, the burden lies on him to prove his case. The issue of appointment of an Advocate Commissioner will come after the entire evidence has been adduced before the Court and based on the said evidence, it is not feasible for the Court to decide the dispute between the parties, then the Advocate



Commissioner will be appointed. But in this case, the said stage has not come, and the Court has rightly rejected the application. This Court do not find any reasons to interfere with the order passed by the trial Court.

5. In that view of the matter, this court is passing the following:

ORDER

- i. Accordingly, the writ petition is ***dismissed***.
- ii. It is made clear that this will not preclude the parties from making an application for appointment of an advocate commissioner at an appropriate stage.
- iii. Pending IAs, if any, shall stand closed.

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

SMC
List No.: 1 Sl No.: 7