



CNR: KAHC010474082022

NC: 2026:KHC:40106
W.P. No.20577/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 31ST DAY OF JULY, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.20577/2022 (GM-CPC)

BETWEEN:

SRI. R.M. MUNIRAJU
S/O LATE KEMPANNA
AGED ABOUT 59 YEARS
R/AT RAMAGOVIDAPURA VILLAGE
NANDAGUDI HOBLI
HOSAKOTE TALUK
BENGALURU RURAL DISTRICT.

...PETITIONER

(BY SRI. GANGI REDDY B.V. ADV.,)

AND:

SRI. U. NARAYANASWAMY
S/O UTTANALLAPPA
AGED ABOUT 59 YEARS
R/AT RAMAGOVIDAPURA VILLAGE
NANDAGUDI HOBLI
HOSAKOTE TALUK
BENGALURU RURAL DISTRICT.

...RESPONDENT

(BY SRI. DILIP M.R. ADV.,)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RECORDS IN O.S.NO.37/2014 ON THE FILE THE II ADDL. CIVIL JUDGE AND JMFC AT HOSAKOTE. QUASH THE ORDER DTD 17.08.2022 ON I.A. FILED UNDER ORDER 26 RULE 9 OF CPC IN O.S.NO.37/2014 ANNEXURE-E PASSED BY THE II ADDL. CITY

Digitally signed
by RUPA V

Location: HIGH
COURT OF
KARNATAKA



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CIVIL AND JMFC, HOSAKOTE AND FURTHER DISMISS THE SAID APPLICATION & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This petition is filed challenging the order dated 17.08.2022 passed in OS.No.37/2014 by II Additional Civil Judge and JMFC, Hoskote (for short 'the trial Court').

2. Heard Sri.Gangi Reddy B.V., learned counsel for the petitioner, Sri.Dilip M.R., learned counsel for the respondent and meticulously perused the material available on record.

3. The respondent herein filed OS.No.37/2014 seeking a judgment and decree of permanent injunction restraining the defendant/petitioner herein from interfering with his peaceful possession and enjoyment of the suit schedule property, and dispossessing the plaintiff from the



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suit schedule property. The suit schedule property is shown as all the part and parcel of vacant property bearing Khaneshumari No.197, measuring to an extent of East to West 60 feet and North to South 72 feet, situated at Nandagudi Village and Hobli, Hoskote Taluk, Bengaluru Rural District. In the said suit, the petitioner/defendant filed a detailed written statement denying the averments made in the plaint. The parties adduced their evidence. Thereafter, the plaintiff filed an application under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') seeking appointment of a Court Commissioner to conduct local inspection of the suit schedule property for the purpose of survey and to submit a report about the encroachment by the defendant, and further sought to appoint the Assistant Director of Land Records (ADLR) and Survey Settlement, Hoskote, as the Court Commissioner. The said application was opposed by the petitioner/defendant. The trial Court, under the impugned order allowed the application by recording a



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reason that the appointment of a Court Commissioner would aid the trial Court in deciding the dispute.

4. It is required to be noticed that the suit of the respondent/plaintiff is one for permanent injunction based on the specific assertion that the plaintiff is the absolute owner of property bearing Khaneshumari No.197, measuring 60 feet x 72 feet of Nandagudi Village, Hoskote Taluk and that the defendant/petitioner herein is trying to dispossess the plaintiff from the suit property. In the said suit, the petitioner/defendant filed a written statement contending that he is the owner of a property measuring East to West 60 ft and North to South 72 feet, in Khaneshumari No.197, in the western side, situated at Nandagudi Village, Hoskote Taluk and that both have purchased the property from the same vendor. Based on such pleadings, the parties adduced the evidence. Thereafter, the plaintiff sought appointment of the ADLR



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as Court Commissioner to find out encroachment by the defendant over the suit schedule property.

5. A perusal of the plaint discloses that there is no specific pleading alleging that the defendant has encroached upon the suit schedule property. In the absence of any such averment in the pleadings, seeking appointment of a Court Commissioner to find out the encroachment would not arise. Admittedly, the suit is one for permanent injunction. In such a suit, the plaintiff is required to establish his lawful possession over the suit schedule property and the alleged interference by the defendant. Based on such pleadings and the evidence adduced, the trial Court is required to consider the prayer for grant of relief of injunction. In the absence of any specific pleading that there is encroachment, filing an application for appointment of a Court Commissioner to find out the encroachment is nothing but an abuse of process of law. However, the trial Court, without assigning



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any reason as to why the appointment of a Court Commissioner is required, proceeded to allow the application by recording a reason that the report of the Court Commissioner would aid the trial Court in deciding the dispute.

6. As the plaintiff has sought the relief of injunction, the primary burden lies upon him to establish that he is in lawful possession of the suit schedule property. Hence, in the facts and circumstances of the present case, the appointment of a Court Commissioner would not arise. Accordingly, I proceed to pass the following:

ORDER

- i. The writ petition is ***allowed***.
- ii. The impugned order dated 17.08.2022 passed in OS.No.37/2014 by II Additional Civil Judge and JMFC, Hoskote is hereby set aside. Consequently, IA



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filed by the plaintiff under Order XXVI
Rule 9 of the CPC seeking appointment
of a Court Commissioner is rejected.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

ABK
List No.: 1 Sl No.: 37