



CNR: KAHC010488842021

NC: 2026:KHC:41909
W.P. No.23688/2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 7TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.23688/2021 (GM-CPC)

BETWEEN:

1. SRI. CHANDRAPPA
S/O CHANNIGARAYAPPA
AGED 53 YEARS.
2. SRI. KANTHARAJU
S/O CHANNIGARAYAPPA
AGED 50 YEARS.
3. SRI. RAJKUMAR ALIAS KUMAR
S/O CHANNIGARAYAPPA
AGED 35 YEARS.
4. SMT. CHANNAMMA
W/O LATE BEGURIAH
AGED 42 YEARS.
5. SRI. KEMPARAJU
S/O LATE CHANNAIAH
AGED 35 YEARS.

ALL ARE R/OF THIPPUR
KASABA HOBLI
GUBBI TALUK
TUMKUR DIST-572216.

...PETITIONERS

(BY SRI. M.B. CHANDRACHOODA, ADV.,)

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by RUPA V
Location: HIGH
COURT OF
KARNATAKA



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AND:

1. SRI. KRISHNAIAH
S/O LATE KEMPACHANNAIAH
AGED 75 YEARS
R/O JYOTHIPURA, KUNDUR ROAD
TUMKUR-572104.
2. SMT. JAYANNA
S/O LATE KEMPACHANNAIAH
AGED 65 YEARS.
3. SMT. JAYAMMA
W/O LATE NANJUNDAIAH
AGED 68 YEARS.
4. SRI. MOHANKUMAR
S/O LATE KEMPACHANNAIAH
AGED 40 YEARS.
5. SRI. CHANDRASHEKAR
S/O LATE KEMPACHANNAIAH
AGED 35 YEARS.

R2 TO R5 ARE RESIDENT OF
THIPPUR, KASABA HOBLI
GUBBI TALUK
TUMKUR DIST-572216.

...RESPONDENTS

(BY SRI. KIRAN KUMAR T.L. ADV., FOR R1 TO R5)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 13.12.2021 PASSED IN M.A.NO.7/2021 ON THE FILE OF SENIOR CIVIL JUDGE AND JMFC, GUBBI VIDE ANNEXURE-O REVERSING THE ORDER DATED 19.08.2021 PASSED ON I.A.NO.1 IN O.S.NO.137/2021 ON THE FILE OF PRINCIPAL CIVIL JUDGE AND JMFC, GUBBI VIDE ANNEXURE-H BY ISSUE OF WRIT OF CERTIORARI & ETC.



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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 13.12.2021 passed in MA.No.7/2021 by the Senior Civil Judge and JMFC, Gubbi (for short 'the trial Court').

2. Heard Sri.M.B.Chandrachooda, learned counsel appearing for the petitioner, Sri.Kiran Kumar T.L., learned counsel appearing for respondent Nos.1 to 5 and meticulously perused the material available on record.

3. The respondents filed a suit in OS.No.137/2021 against the petitioners herein seeking the relief of permanent injunction. The suit schedule property in the said suit is land bearing Sy.No.44, new Sy.No.44/4, measuring 3 acres 0.06 guntas, situated at Thippur Village, Kasaba Hobli, Gubbi Taluk. In the said suit, the respondents/plaintiffs filed an application under Order



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XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (for short 'CPC') seeking an order of temporary injunction against the petitioners from putting up any construction over the suit schedule property till the disposal of the suit. The trial Court, after hearing the parties, vide order dated 19.08.2021, rejected the said application by recording the reasons at paragraph Nos.15 to 17 that the plaintiffs had failed to show that the defendants were putting up construction over the suit schedule property and had also failed to make out a prima facie case. Being aggrieved, the respondents/plaintiffs preferred MA.No.7/2021 before the Appellate Court. The Appellate Court, by impugned order dated 13.12.2021, set aside the order dated 19.08.2021 passed by the trial Court dated in OS.No.137/2021 and restrained the defendants from putting up any construction over the suit schedule property till the final disposal of the suit. This Court, vide order dated 22.12.2021, has stayed the operation of the order dated 13.12.2021.



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4. The primary contention of the learned counsel for the petitioners is that the trial Court has recorded a finding that the plaintiffs had failed to establish that the construction put up by the defendants/petitioners was over the suit schedule property. However, the Appellate Court, without appreciating the said aspect in its proper perspective, set aside the order of the trial Court and allowed the appeal. It is further submitted that the petitioners herein have filed a suit in OS.No.119/2021 against the respondents, wherein the trial Court, by order dated 24.08.2021, granted an order of temporary injunction restraining the defendants in the said suit, i.e., the respondents herein, from interfering with the peaceful possession of the petitioners/plaintiffs over the suit schedule property till the disposal of the suit. The said order has attained finality, as the respondents herein have not challenged the same. In view of the operation of the said order, it is contended that the petitioners cannot be restrained from completing the construction. It is finally



submitted that the construction put up by the petitioner has already been completed.

5. The counsel for the respondents submits that the properties claimed by the petitioners and the respondents are altogether different. It is contended that after podi and durast, the properties claimed by the petitioners are Sy.Nos.44/1 and 44/3, each measuring 30 guntas, whereas the property claimed by the respondents is in Sy.No.44/4, measuring 3 acres 6 guntas. It is further contended that the Appellate Court, considering the said aspect has rightly restrained the petitioners from putting up the construction over the suit schedule property and that the impugned order does not call for any interference.

6. Having heard the learned counsel for the parties and taking note of the facts narrated supra, I am of the considered view that, instead of considering the correctness of the impugned order, the operation of which has already been stayed by this Court by order dated



22.12.2021 and which the same is in force, it would be appropriate to appoint a Court Commissioner to measure the suit schedule properties claimed by both the parties in both the suits. It is also required to be noticed that the dispute between the parties appears to be with regard to the identification of the properties and as to whether the construction put up by the petitioners is situated within the property owned by the petitioners or within the property claimed by the respondents. In the circumstances, it would be appropriate to club both the suits and to be tried by one Court, and to appoint a Court Commissioner for the purpose of measuring and identifying the respective properties. Accordingly, I proceed to pass the following:

ORDER

- i. The writ petition is ***disposed of***.
- ii. The interim order granted by this Court on 22.12.2021 shall be in force till the disposal of the suit.



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- iii. The suit in OS.No.137/2021, pending on the file of Principal Civil Judge and JMFC, Gubbi is ordered to be clubbed and tried along with OS.No.119/2021, pending before the same Court.
- iv. The trial Court is directed to appoint the jurisdictional ADLR as the Court Commissioner to measure the suit schedule properties referred in both the suits and to submit a report within a time bound manner.
- v. The parties are permitted to file their respective memos of instructions before the trial Court.
- vi. The parties are at liberty to file their objections to the report of the Court Commissioner and also have an opportunity to cross-examine the Court



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Commissioner, if the report goes against them.

- vii. It is needless to observe that, if the trial Court comes to conclusion that the construction put up by the petitioners is in the property of the respondents, the petitioners shall not claim any equity in view of the interim order granted by this Court.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

ABK
List No.: 1 Sl No.: 24