



CNR: KAHC010510592022

NC: 2026:KHC:39723
WP No. 22171 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 22171 OF 2022 (GM-CPC)

BETWEEN:

1. SMT. SAKAMMA
W/O LATE NANJASHETTY
AGED ABOUT 62 YEARS.

2. SRI SHIVANNA
S/O LATE NANJASHETTY
AGED ABOUT 47 YEARS.

3. SRI MAHESHA
S/O LATE NANJASHETTY
AGED ABOUT 42 YEARS.

4. SRI NAGANNA
S/O LATE NANJASHETTY
AGED ABOUT 37 YEARS

ALL ARE RESIDING AT
HANDRAKALLIMOLE VILLAGE
KASABA HOBLI
CHAMARAJANAGARA TALUK
AND DISTRICT-571 117.

...PETITIONERS

(BY SRI YOGESHA B. POOJARI, ADVOCATE FOR
SRI RAVISHANKAR S., ADVOCATE)

AND:

SMT. CHIKKATAYAMMA
W/O LATE MASANASHETTY
AGED ABOUT 67 YEARS

Digitally signed
by RUPA V

Location: HIGH
COURT OF
KARNATAKA



CNR: KAHC010510592022

NC: 2026:KHC:39723
WP No. 22171 of 2022

R/AT HANDRAKALLIMOLE VILLAGE
KASABA HOBLI, CHAMARAJANAGARA TALUK
AND DISTRICT-571117.

...RESPONDENT

(BY SRI GIRISH B. BALADARE., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS IN O.S.NO.89/2015 ON THE FILE OF HON'BLE ADDITIONAL CIVIL JDUGE AT CHAMARAJANAGAR AND 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 writ petition is filed challenging the order dated 22.08.2022 passed on I.A.No.6 in O.S.No.89/2015 on the file of the Additional Civil Judge and JMFC, Chamarajanagar (for short, '***the trial Court***').

2. Heard Sri.Yogesha B.Poojari, learned counsel for Sri.Ravishankar S., learned counsel for the petitioners, Sri.Girish B.Baladare, learned counsel for the respondent and perused the material available on record.



3. The respondent-plaintiff filed the suit in O.S.No.89/2015 against the petitioners-defendants seeking the relief of permanent injunction. In the said suit, the petitioners-defendants filed a detailed written statement specifically contending that the *Chakubandi* shown to the schedule tallies with the property where the defendants are residing and based on such factual assertion in the written statement, the trial Court framed the issues, wherein issue No.3 reads as under:

"Whether the defendants prove that the plaintiff has furnished the false boundaries with respect to the schedule property?"

4. The parties adduced the evidence. Thereafter, the petitioners-defendants filed an application under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908, (for short, '**the CPC**') seeking to appoint the Court Commissioner to measure the suit schedule property and submit the report. The said application was opposed by the respondent-plaintiff. The trial Court under



the impugned order rejected the application by recording the reason that burden is on the respondent-plaintiff to prove that the plaintiff is in possession of the suit schedule property.

5. It is required to be noticed that the petitioners-defendants are making specific assertion that the respondent-plaintiff, in the schedule shown the property number, however, the *chakubandi* to the said schedule is wrongly shown and if the said *chakubandi* is noticed, it would be the *chakubandi* of the defendants' property where the petitioners-defendants are residing.

6. It is required to be noticed that the trial Court considering the said factual assertion in the written statement, framed the issue No.3 and burden is casted on the petitioners-defendants to prove the same. In my considered view, any number of evidence would not be sufficient to ascertain the factual assertion of the petitioners-defendants that the respondent-plaintiff has



shown the incorrect *chakubandi* to the schedule and to ascertain the said factual contention, appointment of the Court Commissioner is necessary and the report of the Commissioner would aid the trial Court in deciding the suit between the parties.

7. It is not in dispute that the suit is for injunction. The primary burden is on the respondent-plaintiff to prove that she is in lawful possession of the suit schedule property. However, taking note of the issue No.3 framed by the trial Court extracted supra, I am of the view that the appointment of Court Commissioner is essential to visit the spot and find out the factual assertion of the petitioners-defendants. Hence, I proceed to pass the following:

ORDER

- i. The writ petition is ***allowed***.
- ii. The impugned order dated 22.08.2022 passed on I.A.No.6 in O.S.No.89/2015 on



**NC: 2026:KHC:39723
WP No. 22171 of 2022**

CNR: KAHC010510592022

the file of the Additional Civil Judge and JMFC, Chamarajanagar, is set aside. Consequently, said application I.A.No.6 seeking appointment of the Court Commissioner is allowed and the jurisdictional Panchayath Development Officer of Madapura Grama Panchayath, Chamarajanagar, is appointed as the Court Commissioner, who can take assistance of the Surveyor, to conduct the survey as per the memo of instructions to be submitted by the parties and submit the report to the trial Court in a time bound manner.

No order as to costs.

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**