



CNR: KAHC010533252026

NC: 2026:KHC:52032
WP No. 24196 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 21ST DAY OF SEPTEMBER, 2026
BEFORE
THE HON'BLE MR. JUSTICE K. V. ARAVIND
WRIT PETITION NO. 24196 OF 2026 (GM-CPC)

BETWEEN:

1. SMT. NAZEEM UNNISSA
W/O GHOUSE KHAN,
AGED ABOUT 45 YEARS
R/O JANATA COLONY,
MARALUR DINNE
TUMAKURU TALUK,
TUMAKURU DIST - 572 102
REP. BY ITS SPA HOLDER
GHOUSE KHAN
S/O MOHIDDIN KHAN
AGED ABOUT 58 YEARS
R/O JANATHA COLONY,
MARALURU DINNE, TUMKURU 572 102

...PETITIONER

(BY SRI. PAVAN KUMAR G., ADVOCATE)

AND:

1. JALEEL
S/O PYURUSAB
MARANNA,
AGED ABOUT 40 YEARS
R/O KALEEL COMPOUND,
No.364, 4TH CROSS,
OPP URDU SCHOOL, UPPARAHALLI,
KASABA HOBLI, TUMAKURU TALUK,
TUMAKURU DIST - 572 102

...RESPONDENT

(BY SRI B.M. MADHUKIRAN, ADVOCATE)

Digitally
signed by
VINUTHA B
S

Location:
High Court
of Karnataka



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THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH IMPUGNED ORDER DATED 23/7/2026 PASSED BY THE VII ADDL. CIVIL JUDGE AND JMFC, AT TUMKURU IN O.S. NO.722/2014 ON IA NO. UNDER ORDER 26 RULE 9 R/W 151 OF CPC AT ANNEXURE-A.

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

CORAM: HON'BLE MR. JUSTICE K. V. ARAVIND

ORAL ORDER

The present petition is filed impugning the order dated 23.07.2026 passed in O.S.No.722/2014, whereby the application filed under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, seeking appointment of a Court Commissioner, came to be rejected.

2. The petitioner instituted the suit seeking a decree of permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. The petitioner filed an application seeking appointment of a Court Commissioner to ascertain the extent of encroachment, if any, upon the suit schedule



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property, where the defendant is stated to have constructed a house.

2.1 The Trial Court, by the impugned order, rejected the said application holding that the material available on record is sufficient to adjudicate the controversy involved in the suit.

3. Learned counsel appearing for the petitioner submits that the extent of encroachment cannot be ascertained on the basis of the evidence available before the Court and, therefore, appointment of a Court Commissioner is necessary. It is contended that the Trial Court, without properly appreciating the said aspect, has erroneously rejected the application.

4. Though the respondent has entered a caveat, there is no representation on behalf of the respondent.

5. Considered the submissions made by the learned counsel for the petitioner.

6. The petitioner has filed the suit seeking a decree of permanent injunction. The controversy in the present suit relates to the alleged encroachment upon the suit schedule



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property and the construction of a house on the encroached portion. In the facts and circumstances of the present case, appointment of a Court Commissioner would be necessary to ascertain the extent and portion of the alleged encroachment, which would facilitate proper adjudication of the prayer sought in the plaint.

7. In that view of the matter, this Court is inclined to entertain the present petition. Accordingly, the application filed by the petitioner under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, is hereby allowed. The Trial Court is directed to appoint the Assistant Director of Land Records, Tumakuru, as the Court Commissioner, with necessary instructions to conduct the survey and ascertain the extent and portion of the alleged encroachment.

With the above directions, the writ petition stands ***disposed of.***

Sd/-
(K. V. ARAVIND)
JUDGE

VP