



CNR: KAHC010587202026

NC: 2026:KHC:48044
WP No. 26644 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 26644 OF 2026 (GM-CPC)

BETWEEN:

1. SRI LINGAPPA
S/O NINGAPPA
AGED ABOUT 68 YEARS
2. MRS. DEVAMMA
W/O LINGAPPA,
AGED ABOUT 58 YEARS
3. SRI RAVI
S/O LINGAPPA
AGED ABOUT 44 YEARS
4. MRS. REKHA
C/O LINGAPPA
AGED ABOUT 42 YEARS
5. SRI GANGADHAR
S/O LINGAPPA
AGED ABOUT 40 YEARS

Digitally signed
by SUVARNA T
Location: HIGH
COURT OF
KARNATAKA

THE PETITIONERS NO.1 TO 5 ARE
R/AT CHAGASHETTIHALLI, PANDAVAPURA TALUK,
MANDYA DISTRICT - 571 435

...PETITIONERS

(BY SRI. SRINIVAS V., ADVOCATE)



CNR: KAHC010587202026

NC: 2026:KHC:48044
WP No. 26644 of 2026

AND:

1. SRI BASAPPA
AGED ABOUT 72 YEARS,
S/O LATE LINGAPPA,
R/AT CHAGASHETTIHALLI,
PANDAVAPURA TALUK,
MANDYA DISTRICT - 571 435

2. SHIVA MAHADEVAPPA
S/O LATE LINGAPPA
AGED ABOUT 70 YEARS
R/ATNO-346/1, 10TH TURN,
CHAMUNDI HILL ROAD,
J.C. NAGAR, MYSORE - 570 011

...RESPONDENTS

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE ORDER DATED 01.08.2026 PASSED ON I.A.NO.VII FILED UNDER ORDER XXVI RULE 9 READ WITH SECTION 151 CPC IN O.S.NO.336/2018 ON THE FILE OF THE CIVIL JUDGE AND JMFC, PANDAVAPURA, PRODUCED AS ANNEXURE-E AND CONSEQUENTLY DISMISS I.A. NO.VII FILED BY THE RESPONDENTS/PLAINTIFFS UNDER ORDER XXVI RULE 9 READ WITH SECTION 151 CPC AND ETC.

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

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI



CNR: KAHC010587202026

NC: 2026:KHC:48044
WP No. 26644 of 2026

ORAL ORDER

Aggrieved by the order dated 01.08.2026 passed on I.A. No. VII, filed under Order XXVI Rule 9 read with Section 151 of the CPC, by the II Additional Civil Judge and JMFC, Pandavapura, whereby the Trial Court appointed a Court Commissioner, the petitioners/defendants are before this Court.

2. Learned counsel appearing for the petitioners/defendants submits that it is a specific case of the defendants that the petitioners have encroached upon the property of the plaintiffs and erected construction thereon; the defendants must prove this by adducing evidence. It is submitted that, by filing the present application, the plaintiffs are attempting nothing but the collection of evidence. The plaintiffs have to prove their case, and the burden lies on them. On the strength of the evidence adduced, they have to prove their case, and therefore a Court Commissioner cannot be appointed. It is further submitted that the Trial Court, except for recording and reproducing what has been stated in the affidavit, has failed to apply its mind, and hence the impugned order needs to be set aside.



3. Having heard the learned counsel for the petitioners and perused the material on record. A Co-ordinate Bench of this Court, in the case of ***Sri Shadaksharappa Vs. Kumari Vijayalaxmi and others***¹ has laid down the guidelines for appointment of a Court Commissioner.

4. In the present case, the evidence has been completed, and the Court Commissioner has now been appointed. Once the survey is conducted and the survey report is placed before the trial Court, if the petitioners have any objections, they may always raise them before the trial Court, which shall consider them in accordance with law. Once the entire evidence is completed in matters of this nature, if a commissioner is appointed, the survey is conducted, and the survey report is placed before the Court, the trial Court, along with the evidence already on record, would be in a better position to appreciate the oral evidence as well as the survey report, which would assist the Court in deciding the dispute between the parties. The report of the Court Commissioner is not conclusive evidence, and, at any stretch of the imagination,

¹ 2023 (1) KCCR 637



it would not amount to collection of evidence, as submitted by the learned counsel for the petitioners. In that view of the matter, this Court does not find any reason to interfere with the order impugned.

5. In view of the above discussions, this Court is passing the following:

ORDER

- i. Accordingly, the writ petition is ***dismissed***. However, it is left open to the petitioners to file their objections, if any, to the Commissioner's report, and the Court shall consider the same in accordance with law.
- ii. Pending IAs, if any, in the petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

SMC
List No.: 1 Sl No.: 26