CNR: KAHC010054102024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

R

WRIT PETITION NO. 3109 OF 2024 (GM-CPC)

BETWEEN:

SMT. PARVATHAMMA
S/O DODDAPAPANNA,
W/O LATE VENKATESHAPPA,
AGED ABOUT 57 YEARS,
R/AT CHINNAYANAHALLI,
VIRGONAGAR POST,
BENGALURU-560 049.

...PETITIONER

(BY SRI. DAYANANDA.K.G., ADVOCATE)

AND:

1. SMT. MUNIRATHANAMMA
W/O SRI.ASHWATHAPPA,
AGED ABOUT 68 YEARS,
R/AT CHINNAYANAHALLI,
VIRGONAGAR POST,
BENGALURU-560 049.

2. ASHWATHAPPA
S/O LATE PILLAPPA,
AGED ABOUT 63 YEARS,
R/AT CHINNAYANAHALLI,
VIRGONAGAR POST,
BENGALURU-560 049.

3. SRI. PAPANNA
S/O LATE GANESHAPPA,
AGED ABOUT 65 YEARS,
R/AT AVALAHALLI,
NEAR PILLAKAMMA TEMPLE,

Digitally signed by
SUMATHY KANNAN
Location: HIGH
COURT OF
KARNATAKA

VIRGONAGAR POST,
BENGALURU-560 049.

…RESPONDENTS

(BY SRI. JOSE SEBASTIAN., ADVOCATE FOR R1 & R2;
NOTICE TO R3-DISPENSED WITH-V/O DATED:07.02.2024)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 23.11.2023 PASSED BY THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU ON IA NO.IV IN O.S.NO.26/2014 ALLOWING THE APPLICATION FILED BY THE PLAINTIFFS UNDER ORDER XXVI RULE 9 R/W SECTION 151 OF CIVIL PROCEDURE CODE FOR APPOINTMENT OF COMMISSIONER VIDE ANNEXURE-A.

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

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL ORDER

1. The present petition seeks to challenge an order dated 23.11.2023 passed on I.A.No.V in O.S.No.26/2014 by the Principal Senior Civil Judge, Bengaluru Rural District, Bengaluru (hereinafter referred to as the 'Impugned Order'). By the Impugned Order, an application under Order 26 Rule 9 read with Section 151 of the Civil Procedure Code (hereinafter referred to as the 'CPC') filed by respondent Nos.1 and 2/plaintiffs was allowed.

2. The challenge in the present petition is by the petitioner/defendant No.1 in the suit.

3. Learned counsel for the petitioner/defendant No.1 submits that the prayers in the plaint of respondent Nos.1 and 2/plaintiffs do not reference a prayer for declaration. He further submits that as per the plaintiffs' own averments, plaintiff No.1 is the owner of 1 acre 10 guntas of land bearing Survey No.29 situated in Chinnanagnahalli, BidaraHalli Hobli, Bangalore East. Thus, the plaintiffs could not have filed this application. In addition, it is contended that the application filed is frivolous and without any merit. Thus, he submits the learned Trial Court ought not to have allowed the application.

4. Learned counsel for respondent Nos.1 and 2/plaintiffs on the other hand submits that plaintiffs have set out their contentions and prayers in the plaint and those may be read. In addition, he submits that no prejudice would be caused if a Court Commissioner is appointed.

5. This Court has examined the pleadings before the Court. The suit that has been filed is for a delivery of possession and permanent injunction. The prayers in the plaint as well as the Schedule 'A' and 'B' properties are set out below:

PRAYER

"WHEREFORE, this Hon'ble Court be pleased to:
i) direct the Defendants to deliver vacant possession of the 'B' schedule property to the Plaintiffs;
ii) grant an order of permanent injunction restraining the Defendants from interfering with the Plaintiffs' possession of rest of the entire 'A' Schedule Property;
iii) grant any other relief or reliefs as this Hon'ble court may deem fit to grant to the Plaintiffs in the circumstances of the case.

SCHEDULE 'A'

All that land measuring 1 acre 14 guntas out of 2 acres 28 guntas in Survey No.29, [Handwritten correction: New No. 29/4], situated in Chinnanagnahalli, Bidarahalli Hobli, Bangalore East, bounded on the:

East by : Government Land;
West by: Anjanappa's land;
North by: Portion of 'B' schedule property in the occupation of the first Defendant;
South by: Portion fallen to the share of Narayanaswamy and D. Muniraju in the same survey number.

SCHEDULE 'B'

All that 4 guntas of land in 'A' schedule property in Survey No.29, [Handwritten correction: New No. 29/4], situated in Chinnanagnahalli, Bidarahalli Hobli, Bangalore East bounded on the:
East by: Plaintiffs' rest of 'A' schedule property;
West by: Anjanappa's land;

North by: First Defendant's property;
South by: Portion fallen to the share of Narayanaswamy and D.Muniraju in the same survey number."

[Emphasis Supplied]

6. The application that was filed by respondent Nos.1 and 2/plaintiffs was for appointment of a Court Commissioner to measure plaintiffs' schedule 'A' property and to give a report as to whether the petitioner/defendant No.1 has encroached the same, as shown in 'B' Schedule to the plaint. The application and relevant extract of the affidavit is set out below:

*"**APPLICATION UNDER ORDER XXVI RULE-9 READ WITH SECTION 151 OF THE CODE OF CIVIL PROCEDURE,** the plaintiff above named prays that for the reasons sworn to in the accompanying Affidavit, this **Hon'ble Court be pleased to order to appoint a Court Commissioner to measure the Plaintiffs A-Schedule Property and to give a report whether the Defendant No.1 encroached the same, as shown in the B-Schedule to the plaint, in the interest of justice**."*

"AFFIDAVIT

xxx xxx xxx

*2. I state that I have filed the above suit against the Defendant Nos.1 and 2 seeking for possession of the B-Schedule Property, which is part of the A-Schedule Property and **even though the defendant No.2 filed the written statement and counsel for both of them***

> ***have cross examined me and for the reasons best known to them, they have not chosen to lead evidence and to produce documents to support their case. Since it is a suit for encroachment and I have produced my evidence to support my claim over the A-Schedule Property****, it is necessary to appoint a Court Commissioner to find out whether the Defendants have encroached the suit schedule property, as shown in B-Schedule to the Plaint.*
>
> *3. I further state that under the partition deed and in the plaint, the Northern side boundary has been shown as 1st defendant's property and since she has encroached my portion to the extent of 4 guntas, it is necessary to get the same measured through the Court Commissioner, since no other documentary evidence would be available to prove the same. If the Commissioner is appointed for that purpose, it will enable this court to decide the matter on records."*
>
> [Emphasis Supplied]

7. The learned Trial Court after examining the application and the objections filed to this application has found that the trial has already been concluded. It has further held that in order to know the status of the suit property as on the date of the suit, it is necessary to appoint a Court Commissioner.

8. The Supreme Court in ***M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit v. M/s Modi Transport***

Service[1] has held that a Court Commissioner acts merely as an expert or facilitator to assist the Civil Court in elucidating data and all that the Court Commissioner can do is to ascertain the facts. The Court Commissioner's report would not enure to the benefit of either party without evidence being led in its support. The relevant extract is below:

> *"36.* ***In light of the aforesaid decisions, we would like to introduce the principle of a 'facilitator' which a court may appoint, be it a Commissioner or an expert, for a specific purpose and cause for ascertainment of a fact which may be even disputed.*** *In some cases, the Commissioner may even hear the parties and give his expert opinion based on the material or evidence produced by the parties before the Commissioner as in this case when the Court appointed a Chartered Accountant who as an expert was required to give his opinion on the statement of accounts to facilitate and help the court arrive at a fair and just decision. It was to save the court's time and cut delay in the decision by the court.*
>
> *37.* ***Order 26 Rule 9 of the Code gives wide powers to the court to appoint a commissioner to make local investigations which may be requisite or proper for elucidating any matter in dispute, ascertaining the*** *market value of any property, account of mesne profit or damages or annual net profits. Under Order 26 Rule 11, the court has the power to issue a commission in a suit, in which examination of adjustment of accounts is necessary, to a person as it thinks fit directing him to make such examination or adjustment.* ***When a court issues such a commission to such a person, it can direct the Commissioner to make such an investigation, examination and adjustment***

[1] (2022)14 SCC 345

> ***and submit a report thereon to the court. The Commissioner so appointed does not strictly perform a "judicial act which is binding" but only a "ministerial act".*** *Nothing is left to the Commissioner's discretion, and there is no occasion to use his judgment or permitting the Commissioner to adjudicate and decide the issue involved;* ***the Commissioner's report is only an opinion or noting, as the case may be with the details and/or statement to the court the actual state of affairs. Such a report does not automatically form part of the court's opinion, as the court has the power to confirm, vary or set aside the report or in a given case issue a new commission. Hence, there is neither abdication nor delegation of the powers of functions of the court to decide the issue. Sometimes, on examination of the Commissioner, the report forms part of the record and evidence. The parties can contest an expert opinion/Commissioner's report, and the court, after hearing objections, can determine whether or not it should rely upon such an expert opinion/Commissioner's report. Even if the court relies upon the same, it will merely aid and not bind the court. In strict sense, the Commissioners' reports are "non-adjudicatory in nature", and the courts adjudicate upon the rights of the parties."***
>
> [Emphasis Supplied]

9. In these circumstances, this Court agrees with the Impugned Order that no prejudice would be caused to the petitioner/defendant No.1 if the application is allowed and a report is furnished.

10. Accordingly, this Court finds no ground to interfere with the Impugned Order in exercise of jurisdiction under

Article 227 of the Constitution of India. The petition is ***dismissed.*** All pending applications stand closed.

Digitally signed by TARA VITASTA GANJU
Location: HIGH COURT OF KARNATAKA

(TARA VITASTA GANJU)
JUDGE

YN
List No.: 1 Sl No.: 35