HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO.2811/2022 (GM-CPC)

BETWEEN:

1. VEENA C.N.
   D/O NARASIMHAIAH
   W/O VENKATESHA
   AGED ABOUT 42 YEARS
   NILUVAGILU VILLAGE
   MADDUR TALUK 571428.

2. U.A. SHIVALINGAIAH
   S/O LATE ANKAIAHA
   AGED ABOUT 57 YEARS
   R/AT UPPINAKERE VILLAGE
   NAGARAKERE POST, KASABA HOBLI
   MADDUR TALUK 571428.

…PETITIONERS

(BY SMT. ARCHANA MURTHY, ADV.,)

Digitally signed by RUPA V
Location: HIGH COURT OF KARNATAKA

AND:

1. SMT. USHA DEVI
   W/O N. SHIVARAMU
   AGED ABOUT 48 YEARS.

2. K. SHIVARAMU
   S/O LATE KARIGOWDA
   AGED ABOUT 52 YEARS.

3. CHIKKA CHANNAMMA
   W/O LATE C. RAJU
   AGED ABOUT 52 YEARS.

4. PADMA
   W/O LATE CHAMUNDIGOWDA

AGED ABOUT 56 YEARS.

5. SATHISHKUMAR
S/O LATE C. CHIKKEGOWDA
AGED ABOUT 36 YEARS.

RESPONDENTS NO.1 TO 5 ARE
R/AT CHIKKEGOWDANADODDI
WARD NO 34, MANDYA CITY 571426.

6. M.P. KRISHNAMURTHY
S/O LATE PARTHASARATHY
AGED ABOUT 62 YEARS.

7. M.P. SRINIVASA MURTHY
S/O LATE PARTHASARATHY
AGED ABOUT 64 YEARS.

8. THIMMAIAHA
S/O LATE PUTTEGOWDA
AGED ABOUT 67 YEARS.

RESPONDENTS NO.6 TO 8 ARE
R/AT. CHIKKEGOWDANA DODDI
MANDYA CITY 571426.

…RESPONDENTS

(BY SRI. K.L. SREENIVAS, ADV., FOR R1 TO R5
R6 TO R8 SERVED AND UNREPRESENTED)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER OF THE II ADDL CIVIL JUDGE AND JMFC, MANDYA DATED 5.1.2022 ON I.A.NO.IV IN O.S.NO.595/2019 VIDE ANNEXURE-E & 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 05.01.2022 passed on IA.No.4 in OS.No.595/2019 by the II Additional Civil Judge and JMFC, Mandya (for short 'the trial Court).

2. Smt.Archana Murthy, learned counsel appearing for the petitioners submits that the petitioners are the defendant Nos.3 and 4 in the suit filed by respondent Nos.1 to 5 herein seeking a declaration that the plaintiffs have got easementary right of way and road to a width of 20 feet with regard to the suit schedule property. It is submitted that in the said suit, the defendant Nos.3 to 5 has filed a detailed written statement, wherein they admit the existence of a road. However, it is claimed that the said road is an exclusively private property of the defendants and that the plaintiffs have no right over the same. It is further submitted that in the said suit, the plaintiffs have filed an application seeking appointment of a Court Commissioner for local inspection, which has been

allowed by the trial Court. It is also submitted that when the defendants admitted the existence of the road, the filing of such application is an abuse of the process of law and dragging the further proceedings in the suit. Hence, she seeks to allow the petition.

3. I have heard the arguments of learned counsel for the petitioners and meticulously perused the material available on record.

4. The respondent Nos.1 to 5 herein have filed OS.No.595/2019 seeking a relief of declaration that the plaintiffs have got easementary right of way and road to a width of 20 feet on the East-West side and a length of 230 feet on the north to south shown in the red colour marked as ABCD in the rough sketch for moving to and from their house and site; the said road is described in 'B' schedule property. The defendant Nos.3 to 5 have filed a detailed written statement denying the ownership and easementary right of the plaintiffs over the Schedule 'B' property.

However, they have admitted in the written statement that there exists a road, the said road is a private property of the defendants and it is for their exclusive use. In the said suit, the plaintiffs filed an application under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') seeking appointment of a counsel as a Court Commissioner to conduct a local inspection and report on the existence of 'B' schedule property as stated in the plaint. The said application was opposed by the defendants. The trial Court under the impugned order allowed the said application.

5. It is to be noticed that although the written statement indicates the existence of a road, however, defendants have specifically denied that the said road claimed by the plaintiffs as 'B' schedule property is a private road, exclusively meant for the defendants. It is required to be noticed that the Court Commissioner is required to inspect the property referred to in the application, namely schedule 'B' property by ascertaining

whether there exist an actual road as well as its length and width as described in the plaint, the prayer and the application. The Court Commissioner is also required to ascertain whether the said road provides ingress and egress to the plaintiffs. Such a local investigation by the Commissioner would aid the trial Court in effectively adjudicating the dispute and in determining whether the relief sought in the plaint ought to be granted or refused. In my considered view, the trial Court, upon a judicious application of mind, has rightly concluded that the appointment of a Court Commissioner is necessary to resolve the dispute between the parties and has accordingly, proceeded to allow the application. I do not find any error in the impugned order calling for interference in this petition. Accordingly, the writ petition is ***rejected***.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

ABK, List No.: 1 Sl No.: 30