HC-KAR

CNR: KAHC010061902019

NC: 2026:KHC:65457
WP No. 1336 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.1336 OF 2019 (GM-CPC)

BETWEEN:

1. SMT.RAMAKKA
W/O LATE NARAYANAPPA
AGED ABOUT 75 YEARS

2. SHRI.RAJAPPA
S/O LATE NARAYANAPPA
SINCE DEAD BY LRS

2(A) SMT.YELLAMMA
W/O LATE RAJAPPA
AGED ABOUT 64 YEARS

2(B) SHRI.RAVIKUMAR
S/O LATE RAJAPPA
AGED ABOUT 30 YEARS

2(C) SMT.KOMALA R
D/O LATE RAJAPPA
W/O MUNIRAJU
AGED ABOUT 28 YEARS

2(D) SHRI.SHIVAKUMAR
S/O LATE RAJAPPA
AGED ABOUT 25 YEARS

2(E) SMT.CHANDANA R
D/O LATE RAJAPPA
AGED ABOUT 22 YEARS

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PETITIONER NO.2(A) TO 2(D) ARE
RESIDING AT
NEAR RESHME MARKET
KARINJIKATTE KOLAR TALUK
KOLAR - 563101

…PETITIONERS

(BY SRI.G.A.SRIKANTE GOWDA, ADVOCATE)

AND:

1. DR.NARAYAN
S/O LATE DASAPPA
AGED ABOUT 62 YEARS
R/O NARMADA CLINIC
PALSANDRA LAYOUT
1ST CROSS
KOLAR CITY - 573101

2. SHRI.SRINIVAS
S/O NANJUNDAPPA
AGED ABOUT 55 YEARS
R/O KATARIPALYA
KOLAR - 573101

3. SMT.M.SHANTHAMMA
W/O N.SRINIVAS
AGED ABOUT 60 YEARS
R/O KATARIPALYA
KOLAR - 573101

4. SMT.LAKSHMAMMA
D/O LATE NARAYANAPPA
AGED ABOUT 55 YEARS

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5. SMT.CHINNAMMA
D/O LATE NARAYANAPPA
AGED ABOUT 53 YEARS

6. SMT.SHANTHAMMA
D/O LATE NARAYANAPPA
AGED ABOUT 47 YEARS

7. SMT.SAROJAMMA
D/O LATE NARAYANAPPA
AGED ABOUT 45 YEARS

RESPONDENT NOS.4 TO 7
ARE RESIDENTS OF
KARANJIKATTE
KOLAR TOWN
KOLAR - 573101

...RESPONDENTS

(BY SRI.MURALI N, ADVOCATE FOR R.1;
SRI.B.RAMESH, ADVOCATE FOR R.2 AND R.3;
NOTICE TO R.4 TO R.5 IS D/W V/O/D 03.03.2020)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS AND PROCEEDS OF THE CASE AND SET ASIDE THE ORDER DATED 11.09.2018 (ANNEXURE-H) PASSED BY THE LEARNED I ADDITIONAL SENIOR CIVIL JUDGE, KOLAR, ON THE I.A. FILED UNDER ORDER XXVI RULE 9 OF THE CODE OF CIVIL PROCEDURE, IN R.A.NO.112/2017 AND ETC.,

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

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CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

Captioned writ petition is filed by the plaintiffs assailing the order dated 11.09.2018 passed by the I Additional Senior Civil Judge, Kolar, in R.A.No.112/2017, whereby the application filed by the plaintiffs under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (for short, 'CPC'), seeking appointment of a Court Commissioner for local investigation and inspection of the suit schedule property, came to be rejected.

2. Heard learned counsel appearing for the petitioners and learned counsel appearing for the respondents. Perused the impugned order and the judgment relied upon by learned counsel for the petitioners in O.S.No.523/2003.

3. The controversy in the present writ petition requires consideration in the backdrop of the nature of the suit instituted by the plaintiffs and the proceedings

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pending before the Land Tribunal. The plaintiffs instituted the suit seeking a decree of declaration of title and consequential relief of permanent injunction, with an alternative prayer for delivery of possession. Both learned counsel, on instructions, fairly submit that an extent of 10 guntas in Sy.No.181, subsequently renumbered as Sy.No.181/2, forming part of the larger extent of land measuring 3 acres 21 guntas, is presently the subject matter of proceedings before the jurisdictional Land Tribunal. The claim of the plaintiffs for grant of occupancy rights in respect of the said extent of land is yet to attain finality, particularly in view of the remand order passed by this Court.

4. Notwithstanding the pendency of the proceedings before the Land Tribunal, the plaintiffs instituted the present suit seeking declaration of title, permanent injunction and, in the alternative, recovery of possession. The suit having been dismissed by the Trial Court, the

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plaintiffs have preferred an appeal under Section 96 of CPC, challenging the judgment and decree passed in O.S.No.523/2003. During the pendency of the appeal, they filed an application under Order XXVI Rule 9 of CPC, seeking appointment of a Court Commissioner to identify and demarcate an extent of 10 guntas, depicted as ABCD in the sketch, out of the larger extent of land bearing Sy.No.181.

5. The Appellate Court, however, proceeded to reject the application principally on the ground that the oral and documentary evidence adduced by both parties would require re-appreciation and that the plaintiffs must independently establish the identity and description of the suit schedule property as well as their title on the basis of the evidence already placed on record. The Appellate Court, therefore, concluded that appointment of a Court Commissioner for local inspection, at the instance of the

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plaintiffs, was not warranted. Aggrieved by the said order, the plaintiffs are before this Court.

6. At the outset, this Court would refrain from expressing any opinion on the merits of the plaintiffs' entitlement to seek appointment of a Court Commissioner, particularly having regard to the fact that proceedings concerning the very same extent of land are pending consideration before the jurisdictional Land Tribunal. The scope of enquiry in the present writ petition is, therefore, confined to examining whether the Appellate Court was justified in independently adjudicating the interlocutory application without first adverting to the merits of the appeal and the material available on record.

7. This Court is of the considered view that the Appellate Court would have been better placed to examine the necessity, relevance and maintainability of the application filed under Order XXVI Rule 9 of CPC, had it first called upon the parties to address their arguments on

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the merits of the appeal. It is a settled approach that interlocutory applications filed during the pendency of an appeal, particularly by a litigant, who has suffered a decree at the hands of the Trial Court, ought not to be considered in isolation, divorced from the pleadings of the parties, the oral and documentary evidence adduced, and the reasons and findings recorded by the Trial Court while disposing of the suit.

8. The Appellate Court, being the final fact-finding authority, is required to examine the controversy in its entirety. The necessity of appointing a Court Commissioner cannot be determined merely by referring to the nature of the application or by proceeding on the premise that the parties must establish their respective claims on the basis of the evidence already adduced. The nature of the dispute, the reliefs sought, the controversy surrounding the identity and demarcation of the suit schedule property and the findings recorded by the Trial

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Court are all relevant considerations in deciding whether a local investigation would facilitate an effective adjudication of the appeal.

9. It is in this limited regard that this Court finds that the Appellate Court has proceeded rather hastily in rejecting the application without undertaking the requisite exercise. More particularly, when the plaintiffs have sought not merely an injunction but also an alternative relief of recovery of possession, the Appellate Court ought to have examined the nature of the controversy in the light of the entire evidence on record and the pending proceedings before the Land Tribunal. Without undertaking such an exercise, it would be premature to conclude whether local inspection is wholly unwarranted or whether the proposed investigation would assist the Appellate Court in effectively adjudicating the dispute.

10. This Court, however, makes it clear that the mere filing of an application under Order XXVI Rule 9 of

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CPC would not, by itself, entitle the plaintiffs to an order of appointment of a Court Commissioner. Nor can the mechanism of local investigation be permitted to be employed for collecting evidence or enabling a party to overcome deficiencies in the evidence already adduced. The necessity for such an investigation has to be assessed in the context of the controversy that survives for consideration in the appeal.

11. Therefore, the appropriate course would be for the Appellate Court to take up the appeal for final hearing and call upon the learned counsel appearing for the parties to address their arguments on the merits of the appeal as well as on the necessity and justification for appointment of a Court Commissioner. If, upon consideration of the pleadings, the evidence on record, the findings of the Trial Court and the rival submissions, the Appellate Court is satisfied that local investigation is indispensable for proper adjudication of the controversy, it would be open to the

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Appellate Court to defer final disposal of the appeal and pass appropriate orders on the interlocutory application in accordance with law.

12. Needless to observe that the Appellate Court shall independently assess the necessity of such local investigation, uninfluenced by any of the observations made herein, which are confined to the procedural infirmity noticed in the impugned order. The judgment relied upon by learned counsel for the petitioners does not advance their case in the peculiar factual circumstances of the present matter.

13. For the foregoing reasons, this Court is of the considered view that the impugned order warrants interference, not on the ground that the plaintiffs are necessarily entitled to appointment of a Court Commissioner, but on the limited ground that the application ought to have been considered in the proper

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perspective, having regard to the entire controversy involved in the appeal.

14. Accordingly, this Court proceeds to pass the following:

ORDER

(i) The writ petition is ***allowed***.

(ii) The order dated 11.09.2018 passed by the I Additional Senior Civil Judge, Kolar, in R.A.No.112/2017, rejecting the application filed by the plaintiffs under Order XXVI Rule 9 of CPC, is hereby quashed and set-aside.

(iii) The matter is remitted to the Appellate Court for fresh consideration of the application filed under Order XXVI Rule 9 of CPC.

(iv) The Appellate Court shall call upon the learned counsel appearing for both parties to address their arguments on the merits of the appeal as well as on the necessity and justification for appointment of a

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Court Commissioner. Upon hearing the parties and considering the entire material on record, the Appellate Court shall determine whether local investigation is warranted and pass appropriate orders in accordance with law, keeping in view the observations made hereinabove.

(v) It is made clear that this Court has not expressed any opinion on the merits of the rival claims or on the entitlement of the plaintiffs to appointment of a Court Commissioner. All contentions are left open to be urged before the Appellate Court.

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(SACHIN SHANKAR MAGADUM)
JUDGE

NBM
List No.: 1 Sl No.: 3