HC-KAR

NC: 2026:KHC:60987
WP No. 27558 of 2026

CNR: KAHC010597612026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE K. V. ARAVIND

WRIT PETITION NO. 27558 OF 2026 (GM-CPC)

BETWEEN:

1. MRS SUNANDA MADTHA
   W/O. PRABHAKAR RONI MENON
   AGED ABOUT 60 YEARS.

2. MRS. POORNIMA JYOTHI
   D/O. PRABHAKAR RONI MENON,
   AGED ABOUT 39 YEARS.

3. DIANA SAVITHA
   D/O. PRABHAKAR RONI MENON,
   AGED ABOUT 35 YEARS,
   ALL ARE R/AT DOOR NO.6-18-730, MENON
   COMPOUND, NEAR SANGANIKETHANA
   MANNAGUDDA, MANGALURU - 575003(DK)
   ALL ARE REPRESENTED BY THEIR G.P.A. HOLDER
   MR.ALWYN JAYAKAR MENON
   S/O. LATE. MR.DEVAPALAN MENON
   AGED ABOUT 59 YEARS,
   R/AT MENON COMPOUND, NEAR SANGANIKETHANA
   MANNAGUDDA, MANGALURU - 575 003(DK).

...PETITIONERS

(BY SRI. M SUDHAKAR PAI., ADVOCATE)

AND:

1. MR K VASANTHA SHETTY
   S/O. RAMA SHETTY,
   AGED ABOUT 83 YEARS,
   R/AT RAMA KRIPA
   DOOR NO.6-18-725, NEAR SANGANIKETHANA

Digitally signed by VINUTHA B S
Location: High Court of Karnataka

MANNAGUDDA, MANGALURU - 575 003(DK).

…RESPONDENT

(BY SRI. K RAVISHANKAR., ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI, TO QUASH THE ORDER DTD-25.04.2026 ON I.A.NO.XIII IN O.S.NO.694/2021 ON THE FILE OF V ADDITIONAL CIVIL JUDGE AND JMFC AT MANGALURU, D.K. VIDE ANNEXURE-H HEREIN AND ALSO ORDER DTD 21.07.2026 ON I.A.NO.XIV IN O.S.NO.694/2021 ON THE FILE OF V ADDITIONAL CIVIL JUDGE AND JMFC AT MANGALURU, D.K. VIDE ANNEXURE-M HEREINB) ISSUE ANY OTHER WRIT, ORDER OR DIRECTION, AS THIS COURT DEEMS FIT TO GRANT, UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

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 impugns the order dated 25.04.2026 rejecting the application filed in I.A. No. 13 under Order XXVI Rule 9 of the Code of Civil Procedure, and the order dated 21.07.2026 rejecting the application filed in I.A. No. 14 under Order XVIII Rule 17 of the Code of Civil Procedure, seeking recall of DW1 for further cross-examination.

2. Learned counsel appearing for the petitioner submits that the suit is for a declaration that the defendant has encroached upon an extent of 0.32 cents, described as the Suit Schedule-C property. It is contended that the defendants have denied the alleged encroachment and that the appointment of a Court Commissioner is necessary to ascertain whether any encroachment has occurred and, if so, its extent.

3. Learned counsel further submits that the application seeking recall of DW1 for further cross-examination was filed in view of two documents sought to be confronted to the witness, one of which is Exhibit P33 in O.S.No.660/2021, a certified copy of which was issued at the time of the examination of DW1.

4. It is submitted that the Trial Court rejected the application on hyper-technical grounds.

5. Per contra, learned counsel appearing for the respondent submits that the Trial Court was justified in

rejecting the application for appointment of a Court Commissioner, as such appointment would amount to collecting evidence on behalf of the plaintiff. It is contended that, where encroachment is pleaded, the burden lies on the plaintiff to prove the same and that appointment of a Court Commissioner to establish the plaintiff's case is impermissible.

6. Learned counsel further submits that, on the date the application seeking recall of DW1 was filed, the document sought to be confronted was already available with the petitioner and the suit was still at the stage of cross-examination of DW1.

7. It is submitted that the application has been filed to delay the proceedings and would cause hardship to the respondent.

8. Considered the submissions made by learned counsel for the parties and perused the impugned order.

9. The suit is instituted seeking a declaration that the defendants have encroached upon the 'C' Schedule Property. The alleged encroachment is disputed by the defendants.

10. The Co-ordinate Bench of this Court, in W.P.No.201274/2022 dated 24.01.2023, has held that the appointment of a Court Commissioner is desirable where the dispute relates to boundary encroachment. It has further held that a Court Commissioner may be appointed even during the course of trial and that the Commissioner's report may assist the plaintiff in establishing the case.

11. In view of the aforesaid legal position, the Trial Court committed an error in rejecting the application for appointment of a Court Commissioner merely on the ground that such appointment would amount to collecting evidence.

12. The petitioner filed an application seeking recall of DW1 for further cross-examination to mark the document at Annexure-J, which is marked as Exhibit P33 in O.S.No.660/2021. The said application was rejected on the ground that the petitioner had ample opportunity to mark the document, as it had been issued by the Court well before the closure of the cross-examination of DW1.

13. A perusal of the dates on which the copy of the document was issued and the cross-examination of DW1 was closed reveals that the interval between the two dates was very short. No doubt, the petitioner had an opportunity to mark the document; however, having regard to the short interval, the bona fides of the application cannot be doubted. The petitioner's failure to mark the document ought not to result in undue hardship to the respondent.

14. However, in the present case, any hardship caused to the respondent can be adequately compensated by imposing costs. In view of the above, the following order:

ORDER

i. Writ Petition is allowed.

ii. The order dated 25.04.2026 on I.A. No. 13 is hereby set aside.

iii. Application in I.A. No. 13 made under Order XXVI Rule 9 is hereby allowed.

iv. The Trial Court is directed to appoint a Court Commissioner.

v. Both the parties shall file their memoranda of instructions accordingly before the trial Court.

vi. Order dated 21.07.2026 on I.A. No. 14 is hereby set aside.

vii. Application made under Order XVIII Rule 17 is hereby allowed.

viii. DW1 is hereby recalled, for further cross-examination. The cross-examination shall be completed on the day when the date is fixed by the Trial Court, subject to payment of costs of Rs.10,000/- to DW1.

Sd/-
(K. V. ARAVIND)
JUDGE

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List No.: 1 Sl No.: 19