HC-KAR

NC: 2026:KHC:60664
WP No. 28295 of 2026

CNR: KAHC010619482026

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. 28295 OF 2026 (GM-CPC)

BETWEEN:

1. M/S BHAGWATH SUBRAMANYA
CHANDRASHEKAR
S/O MR. B.S. SUBRAMANYA
AGED ABOUT 81 YEARS,
RESIDING AT NO. 23,
32ND D CROSS (OLD NO.571,
31ST CROSS 4TH BLOCK,
JAYANAGAR, BENGALURU-560011

…PETITIONER

(BY SRI SHYAMA PRASADA K.V., ADVOCATE)

AND:

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

1. MR. SUNIL SUBBAKRISHNA
S/O MR. B. SUBBAKRISHNA
AGED ABOUT 72 YEARS
RESIDING AT NO.23,
32ND CROSS (OLD NO.571, 31ST CROSS)
4TH BLOCK, JAYANAGAR
BENGLAURU-560011
AND ALSO AT
22, LOCKWOOD ROAD, SCARSDALE,
NEW YORK 10583
UNITED STATES OF AMERICA

…RESPONDENT

(BY SRI DEEPAK BHASKAR, ADVOCATE FOR C/R (VC))

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUION OF INDIA PRAYING TO SET ASIDE THE ORDER PASSED IN I.A. No.III ORDER DATED 22.06.2026 PASSED IN O.S. NO.5241/2023 BY XXII ADDL. CITY CIVIL AND SESSIONS JUDGE, AT BENGALURU IS AT ANNEXURE A AND PASS ANY OTHER RELIEF AS THIS HON'BLE COURT DEEMED FIT UNDER THE CIRCUMSTANCE OF THE CASE.

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

This petition is filed impugning the order dated 22.06.2026 passed on I.A. No. III, whereby the application filed under Order XXVI Rules 9 and 10 of the CPC was partly allowed, directing the appointment of a Court Commissioner to ascertain the rate of rent in respect of the suit schedule property.

2. The respondent herein instituted a suit seeking a declaration that the plaintiff is the absolute owner of the suit schedule property and a direction to the petitioner herein, who is the defendant therein, to vacate the suit schedule property and deliver possession thereof, together with mesne profits. The petitioner herein filed a written statement admitting to having a 50% share in the suit schedule property and raised a

counterclaim seeking partition and separate possession of his 50% share in the suit schedule property. Having regard to the same, the Trial Court directed ascertainment of the rate of rent.

3. Learned counsel for the petitioner submits that the suit is instituted seeking a declaration that the plaintiff is the absolute owner of the suit schedule property and for delivery of possession thereof, along with mesne profits. It is submitted that the said reliefs have been opposed by the petitioner. Learned counsel further submits that the application, which is the subject matter of the impugned order, proceeds on the averment that the petitioner is in unlawful and illegal use, possession and occupation of the suit schedule property. It is contended that the appointment of a Court Commissioner would prejudice the rights of the petitioner.

4. Per contra, learned counsel appearing for the respondent supports the impugned order.

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

6. The suit is instituted seeking a declaration that the plaintiff is the sole and absolute owner of the suit schedule property, delivery of peaceful possession thereof, and mesne profits. The petitioner herein has filed a written statement along with a counterclaim, admitting the plaintiff's right to the extent of 50% in the suit schedule property and seeking partition and separate possession of the remaining 50% share. In that view of the matter, prima facie, the petitioner herein claims a 50% share in the suit schedule property.

7. Although the application was supported by averments that the petitioner is in unlawful and illegal use, possession and occupation of the suit schedule property, the Trial Court has partly allowed the application only to the extent of directing ascertainment of the rate of rent in respect of the suit schedule property. The direction issued to the Court Commissioner is confined to ascertaining the rate of rent and does not extend beyond that scope.

8. In that view, the submission that the appointment of the Court Commissioner would amount to collection of evidence and that the order is premature is not sustainable.

This Court is of the view that no prejudice would be caused to either party if the rate of rent is ascertained as directed by the Trial Court.

9. Accordingly, this Court finds no error or infirmity in the impugned order. The writ petition is dismissed.

Sd/-
(K. V. ARAVIND)
JUDGE

VBS
List No.: 1 Sl No.: 21