HC-KAR

NC: 2026:KHC:64501
WP No. 31606 of 2026

CNR: KAHC010684132026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2026

BEFORE

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

WRIT PETITION NO. 31606 OF 2026 (GM-CPC)

BETWEEN:

1. JOGAIAH,
   S/O CHIKKAPUTTAIAH,
   AGED ABOUT 65 YEARS,
   R/AT NO.425, ALANAHALLY VILLAGE,
   NEAR MANDAL PANCHAYATH OFFICE,
   KASABA HOBLI, MYSURU TALUK,
   MYSURU DISTRICT 570001.
   SWAMY H. N.,
   GENERAL POWER OF ATTORNEY
   OF THE PLAINTIFF

...PETITIONER

(BY SRI HARSHAVARDHANA S., ADVOCATE)

Digitally signed by VIJAYA P
Location: High Court of Karnataka

AND:

1. NINGAPPA,
   SINCE DEAD BY LRS
   LEGAL REPRESENTED BY
   SMT. NANJAMANAMMA
   W/O LATE NINGAPPA,
   AGED ABOUT 57 YEARS,

2. SMT. MANJULA
   D/O LATE NINGAPPA
   AGED ABOUT 42 YEARS

3. SMT SHEELA
D/O LATE NINGAPPA
AGED ABOUT 38 YEARS

4. SMT. GEETHA
D/O LATE NINGAPPA
AGED ABOUT 35 YEARS

ALL ARE R/AT NO.426,
NEAR MANDAL PANCHAYATH OFFICE,
ALANAHALLI VILLAGE,
KASABA HOBLI, T NARASIPURA ROAD,
MYSURU TALUK 578001

…RESPONDENTS

(BY SMT. YUKTHA ANIL, ADVOCATE FOR
GPA HOLDER FOR R1 TO R4)

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 23.09.2026 PASSED BY THE XIII ADDL. CIVIL JUDGE AND JMFC MYSURU IN I A NO.32 IN O S NO.1759/2017 AS ILLEGAL AND QUASH THE SAME 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

This petition impugns the order dated 23.09.2026 passed in O.S.No.1759/2017, whereby I.A.No.XXXII, filed under Section 151 of the CPC, came to be rejected, thereby denying the petitioner an opportunity to file objections to the

Commissioner's report and sketch dated 31.12.2025 and 16.03.2026, respectively.

2. Learned counsel appearing for the petitioner submits that the learned counsel, whose no-objection was recorded by the Court, was not duly instructed and was a newly enrolled advocate. It is further submitted that the junior counsel was not properly instructed, as the senior counsel representing the petitioner in the suit was unable to attend the office on account of ill health.

2.1 It is contended that any mistake or omission on the part of the counsel ought not to prejudice the litigant or deprive the petitioner of an opportunity otherwise available in law.

3. *Per contra*, learned counsel appearing for the respondents, while vehemently opposing the submissions made on behalf of the petitioner and justifying the impugned order, fairly submits, having regard to the physical condition of the petitioner, who is present before this Court, that one opportunity may be granted to the petitioner to file objections

to the Commissioner's report, without seeking any further adjournments.

3.1 It is further submitted that, upon filing such objections, if the petitioner intends to cross-examine the Court Commissioner, the petitioner may be permitted to do so, subject to time-bound conditions.

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

5. Without examining the merits or otherwise of the contentions urged by the parties or the findings recorded by the Trial Court, this Court, having regard to the physical condition of the petitioner, who is present before it, is of the view that the mistake committed by the learned counsel ought not to result in depriving the petitioner of a valid defence available in law.

6. Learned counsel appearing for the respondents has vehemently contended that repeated applications are being filed only with a view to delaying the disposal of the suit. The

Trial Court shall take note of this submission while considering any further applications filed by the petitioner.

7. Accordingly, this Court is inclined to set aside the impugned order, subject to the following conditions:

O R D E R

I. The writ petition is ***allowed***.

II. The order dated 23.09.2026 passed in O.S.No.1759/2017 is hereby ***set aside***.

III. I.A.No.XXXII filed under Section 151 of the CPC is hereby ***allowed***.

IV. The petitioner is permitted to file objections to the Commissioner's report and sketch dated 31.12.2025 and 16.03.2026, respectively. Such objections shall be filed on or before the next date of hearing to be fixed by the Trial Court.

V. If a request is made by the petitioner, the Trial Court shall afford an opportunity to cross-examine the Court Commissioner on the date fixed for such purpose.

VI. In the event the petitioner fails to file objections within the time permitted or fails to cross-examine the Court Commissioner when the Commissioner is present before the Trial Court on the date fixed for such purpose, the Trial Court shall be at liberty to proceed further without granting any further opportunity in this regard.

Sd/-
(K. V. ARAVIND)
JUDGE

VP
List No.: 1 Sl No.: 16