HC-KAR

NC: 2026:KHC:65091
WP No. 32429 of 2026

CNR: KAHC010705872026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF NOVEMBER, 2026

BEFORE

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

WRIT PETITION NO. 32429 OF 2026 (GM-CPC)

BETWEEN:

1. SRI. D. NARAYANASWAMY
   S/O LATE DODDAMUNIYAPPA
   AGED ABOUT 63 YEARS,

2. SRI. GOPALAPPA
   S/O LATE DODDAMUNIYAPPA
   AGED ABOUT 53 YEARS,
   BOTH ARE R/AT
   POOJARAMANAHALLI VILLAGE,
   JADAGENAHALLI HOBLI,
   HOSKOTE TALUK - 562 114,
   BENGALURU RURAL DISTRICT.

...PETITIONERS

Digitally signed by VIJAYA P
Location: High Court of Karnataka

(BY SRI. VIJAYA KUMAR BHAT A, ADVOCATE)

AND:

1. SRI. LAKSHMINARAYANA
   S/O MUNI POOJAPPA
   AGED ABOUT 43 YEARS

2. SRI. NARASIMHA MURTHY
   S/O MUNIPOOJAPPA
   AGED ABOUT 39 YEARS
   RESPONDENTS 1 AND 2 ARE

R/O POOJARAMANAHALLI VILLAGE,
JADAGENAHALLI HOBLI,
HOSKOTE TALUK - 562 114,
BENGALURU RURAL DISTRICT.

…RESPONDENTS

(BY SRI. ROHAN A.P, ADVOCATE FOR
SRI. S.D.N PRASAD, ADVOCATE FOR C/R)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO I) ISSUE A WRIT IN THE NATURE OF CERTIORARI QUASHING OF THE IMPUGNED ORDER DATED 16-09-2026 IN I.A. PASSED BY THE II ADDITIONAL CIVIL JUDGE AND JMFC HOSKOTE, IN O.S. NO. 275/2024 IN APPLICATION FOR APPOINTMENT OF COMMISSIONER 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 writ petition is filed challenging the order dated 16.09.2026 passed by the II Additional Civil Judge and JMFC, Hoskote, in O.S. No.275/2024, whereby the application filed under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908, came to be rejected.

2. Learned counsel appearing for the petitioners submits that the suit is one for permanent injunction involving a boundary dispute and identification of the suit schedule property. It is contended that the appointment of a Court Commissioner to conduct a local inspection and demarcate the suit schedule property is necessary for the proper adjudication of the dispute.

2.1 It is further submitted that the Trial Court rejected the application on the ground that the appointment of a Court Commissioner for the purpose of collecting evidence is impermissible.

2.2 In support of the said contention, learned counsel places reliance on the judgment of this Court in ***Shadaksharappa S/o Veranna v. Kumari Vijayalaxmi and Others***, dated ***24.01.2023***, passed in ***W.P. No.201274/2022***.

3. *Per contra*, learned counsel appearing for the respondents/caveators submits that the suit is still at the stage of recording of evidence and that the appointment of a Court

Commissioner at this stage would amount to permitting the plaintiff to collect evidence, which is impermissible in law.

3.1 It is further submitted that the necessity for appointment of a Court Commissioner can be considered by the Trial Court after the completion of evidence, having regard to the material available on record. In view of the above, it is contended that the impugned order does not warrant interference.

4. I have considered the submissions made by the learned counsel for the parties and perused the material available on record.

5. The suit is one for permanent injunction involving a boundary dispute and identification of the suit schedule property. The Trial Court has rejected the application primarily on the ground that the appointment of a Court Commissioner before completion of recording of evidence would amount to permitting the plaintiff to collect evidence in support of his case.

6. An identical issue fell for consideration before this Court in ***Shadaksharappa*** (supra), wherein this Court held that, in

cases involving boundary disputes or identification of properties, appointment of a Court Commissioner in exercise of powers under Order XXVI Rule 9 of the CPC is desirable for the proper adjudication of the controversy. It was further held that such an exercise can be undertaken at any stage of the proceedings, even before commencement of the trial. This Court also observed that the appointment of a Court Commissioner is not impermissible merely because the Commissioner's report may assist the parties in establishing their respective cases.

7. In the light of the law laid down by this Court in ***Shadaksharappa*** (supra), the reasoning adopted by the Trial Court that appointment of a Court Commissioner before completion of recording of evidence would necessarily amount to collection of evidence cannot be sustained. Where the controversy relates to the identification, location and demarcation of the suit schedule property, a local investigation by a Court Commissioner would assist the Court in effectively adjudicating the dispute.

8. In that view of the matter, the finding recorded by the Trial Court is contrary to the law laid down by this Court in ***Shadaksharappa*** (supra) and is liable to be set aside.

9. Accordingly, the following:

O R D E R

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

II. The order dated 16.09.2026 passed by the II Additional Civil Judge and JMFC, Hoskote, in O.S. No.275/2024, is hereby ***set aside***.

III. Consequently, I.A. filed under Order XXVI Rule 9 read with Section 151 of the CPC stands ***allowed***.

IV. Both parties are at liberty to furnish their respective memos of instructions to the Court Commissioner before the Trial Court.

V. Having regard to the fact that the suit is of the year 2024, the Trial Court shall ensure that the appointment of the Court Commissioner and submission of the Commissioner's report are completed within the time frame to be fixed by

the Trial Court, so as to avoid unnecessary delay in the disposal of the suit.

Sd/-
(K. V. ARAVIND)
JUDGE

VN
List No.: 2 Sl No.: 5