HC-KAR

NC: 2026:KHC:60662
WP No. 33061 of 2026

CNR: KAHC010732102026

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. 33061 OF 2026 (GM-CPC)

BETWEEN:

1. SMT.ANITHA T P
   W/O SRI.HANUMANTHA RAYUDU,
   AGED ABOUT 45 YEARS,
   R/AT NO.663, 1ST MAIN, GAYATHRINAGARA,
   BENGALURU-560010.

...PETITIONER

(BY SRI JNANESH KUMAR K., ADVOCATE)

AND:

1. SRI. NATARAJA H.,
   S/O LATE HANUMAIAH,
   AGED ABOUT 74 YEARS,
   R/O OORAKERE VILLAGE,
   HEBBAKA ROAD, 4TH CROSS,
   NEAR HP PETROL BUNK,
   TUMAKURU-572106.

...RESPONDENT

(BY SRI ASHOK R.K., ADVOCATE)

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

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE ORDER AT ANNEXURE-F DATED 17.09.2026 PASSED BY THE LEARNED XXXV ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU, IN SUIT O.S. No.3433/2022, AND CONSEQUENTLY ALLOW THE SAID APPLICATION FOR APPOINTMENT OF COURT COMMISSIONER.

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 17.09.2026 passed on I.A. No. VIII, whereby the application filed under Order XXVI Rule 9 of the Code of Civil Procedure, seeking appointment of a Court Commissioner, was rejected..

2. Learned counsel for the petitioner submits that the suit has been instituted seeking a declaration and mandatory injunction on the ground of alleged encroachment by the defendant. It is contended that the appointment of a Court Commissioner is necessary to ascertain the extent of the alleged encroachment and facilitate proper adjudication of the suit. It is further submitted that the application was filed after the completion of evidence and that the suit is presently set down for final arguments.

3. *Per contra*, learned counsel appearing for the respondent submits that similar applications had been filed earlier,

pursuant to which a Court Commissioner was appointed. It is further submitted that writ petitions concerning the deviation in the property are pending before this Court. In view of the foregoing, learned counsel contends that the appointment of a Court Commissioner is unnecessary.

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

5. The suit has been instituted seeking a declaration and mandatory injunction. The Coordinate Bench of this Court, in ***W.P. No. 201274/2022***, by order dated ***24.01.2023***, has categorically held that the appointment of a Court Commissioner is desirable where the dispute relates to boundary encroachment. It has further held that such appointment is permissible even before the commencement of the trial.

6. In the present case, the suit is at the stage of final arguments, and the principal dispute concerns the alleged encroachment. In view of the principles laid down in the aforesaid judgment, the Trial Court has erred in rejecting the

application for appointment of a Court Commissioner. Such appointment would assist the Court in the complete adjudication of the dispute, avoid multiplicity of proceedings, and minimise the possibility of error.

7. In that view, this Court is inclined to entertain the petition. Accordingly, the following:

O R D E R

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

II. The impugned order dated 17.09.2026 is hereby ***set aside***.

III. The application in I.A. No. VIII filed under Order XXVI Rule 9 of the Code of Civil Procedure is hereby ***allowed***.

IV. The Trial Court is directed to appoint a competent person as Court Commissioner and issue appropriate directions to both parties to facilitate compliance with the commission.

Sd/-
(K. V. ARAVIND)
JUDGE

VBS
List No.: 1 Sl No.: 38