HC-KAR

NC: 2026:KHC:61070
WP No. 33772 of 2026

CNR: KAHC010744952026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF NOVEMBER, 2026

BEFORE

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

WRIT PETITION NO. 33772 OF 2026 (GM-CPC)

BETWEEN:

1. MR. B.RAMAIAH,
   S/O LATE N.BALAIAH,
   AGED ABOUT 67 YEARS,

2. MR.B.LAKSHMANA,
   S/O LATE N.BALAIAH,
   AGED ABOUT 64 YEARS,

3. MR.B.PARASHURAM,
   S/O LATE N.BALAIAH,
   AGED ABOUT 57 YEARS,

   ALL ARE RESIDING AT
   NO.47/1, SWASTHI ROAD,
   SHANTHINAGAR,
   BENGALURU - 560 027.

...PETITIONERS

(BY SRI. GURUVA REDDY N., ADVOCATE)

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

AND:

1. MR. M. CHANDRASEKHAR,
   S/O MR.S.MUNITAYAPPA,
   AGED ABOUT 56 YEARS,
   R/AT NO.13, SWASTHI ROAD,

SHANTHINAGAR,
BENGALURU - 560 027.

2. MRS.KANTAMMA,
W/O LATE MR. MUNITAYAPPA,
AGED ABOUT 79 YEARS,
R/AT PLOT NO.118,
GREEN VILLA LAYOUT,
HALANAYAKANAHALLI,
SARJAPURA ROAD,
BENGALURU - 560 035.

3. MRS.M.SHYAMALA,
D/O LATE MR.MUNITAYAPPA,
AGED ABOUT 49 YEARS,
PENDING CLER,
23RD ACMM COURT,
NRUPATUNGA ROAD,
BENGALURU - 560 002.

…RESPONDENTS

(BY SRI.D.L.JAGADEESH, LEARNED SENIOR COUNSEL FOR
SMT.RAKSHITHA D.J., ADVOCATE FOR C/R1)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 17.10.2026 PASSED BY THE COURT OF ADDL. CITY CIVIL AND SESSIONS JUDGE (CCH-16) ON I A NO. 22 FILED UNDER ORDER XXVI RULE 9 R/W SECTION 151 OF CPC IN O S NO.743 OF 2017 VIDE ANNX-N AND CONSEQUENTLY ALLOW IA NO. 22 FILED IN THE ABOVE SAID SUIT 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 17.10.2026 passed on I.A. No. 22, whereby the application filed under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC'), seeking appointment of a Court Commissioner, came to be rejected.

2. The petitioners instituted O.S. No. 743/2017 seeking declaratory and injunctive reliefs, including a declaration that the 'B' Schedule property is a passage measuring 3 feet from East to West and 49 feet from North to South.

3. Learned counsel appearing for the petitioners submits that the petitioners are the owners of the 'A' Schedule property and that the 'B' Schedule property constitutes a passage providing ingress and egress to the 'A' Schedule property. It is submitted that the petitioners claim title to the property under the registered Sale Deed dated 26.04.2004, executed in favour of their mother, and the Gift Deed dated 27.04.2024, executed in favour of the petitioners.

3.1 It is further submitted that the respondents, while carrying out construction on their property, have illegally encroached upon the 'B' Schedule property, thereby obstructing the petitioners' right of access through the passage provided under the Sale Deed and recognised in the municipal records.

3.2 Learned counsel submits that, since the dispute concerns the alleged encroachment by the respondents upon the 'B' Schedule property, the appointment of a Court Commissioner to inspect the property and ascertain the factual position is necessary. It is contended that the Trial Court, without examining the purpose for which the appointment of a Court Commissioner was sought, erroneously rejected the application.

4. *Per contra*, learned Senior Counsel appearing for respondent No. 1 on caveat submits that there are no pleadings regarding the recognition of the 'B' Schedule property as a passage in the revenue records. It is contended that the burden is upon the plaintiffs to establish the existence of the passage as described in the 'B' Schedule to the suit.

4.1 It is further submitted that an application for appointment of a Court Commissioner cannot be filed for the purpose of collecting evidence. Learned Senior Counsel contends that the Trial Court, having regard to the pleadings on record, has rightly rejected the application by the impugned order.

5. Considered the submissions made by learned counsel for the parties and perused the material available on record.

6. The suit is instituted seeking a declaration that the 'B' Schedule property constitutes a passage providing ingress and egress to the 'A' Schedule property. The plaint averments specifically allege that the defendants have encroached upon the passage, which measures 3 feet from East to West and 49 feet from North to South. The said allegations have been specifically denied in the written statement. The defendants contend that no such passage exists and that the 3-foot space available is merely a setback left within their property for construction of the building.

7. The material on record indicates that the passage remained intact even after the construction of the building by

the defendants. Prima facie, it appears that, at a later stage, the passage was blocked by the installation of a gate. The material on record sufficiently establishes, at this stage, the prima facie existence of the passage.

8. If the disputed space were merely a setback provided for the building, it would ordinarily have been indicated, described or depicted differently in the relevant documents. Whether the 'B' Schedule property constitutes a passage, as claimed by the plaintiffs, or a setback to the building constructed by the defendants is a matter requiring investigation by the Court Commissioner.

9. A Co-ordinate Bench of this Court, in ***W.P. No. 201274/2022***, decided on ***24.01.2023***, has held that appointment of a Court Commissioner is desirable where the parties are in dispute regarding encroachment or identification of boundaries. The Co-ordinate Bench has further held that appointment of a Court Commissioner is permissible even before commencement of the trial and that such appointment may also be made to assist the plaintiffs in establishing their case.

10. In view of the above, the Trial Court has failed to appreciate the nature of the dispute and the necessity for assistance of a Court Commissioner.

11. Further, the purpose of appointing the Court Commissioner is limited to the matters indicated hereinabove. Such appointment would neither prejudice the rights of either party nor cause any injustice. On the contrary, it would assist the Trial Court in the proper, complete and effective adjudication of the dispute. Accordingly, the impugned order cannot be sustained and is liable to be set aside.

12. This Court, in the judgment referred to supra, has observed that, to avoid delay in the disposal of suits, the Trial Court should fix a timeline for submission of the Court Commissioner's report whenever a Court Commissioner is appointed.

13. It is further submitted that, in the earlier proceedings, this Court had directed the Trial Court to dispose of the suit on or before the end of December 2026. In view of the said direction, the time consumed in appointing the Court

Commissioner and obtaining the Commissioner's report shall stand excluded while computing the timeline earlier fixed for disposal of the suit.

14. Hence, the following:

ORDER

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

II. The impugned order dated 17.10.2026 passed on I.A. No. 22 by the XVII Additional City Civil and Sessions Judge, Bengaluru (CCH-16), is hereby ***set aside***.

III. I.A. No. 22 filed under Order XXVI Rule 9 read with Section 151 of the CPC is hereby ***allowed***.

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

V. The observations made hereinabove are confined to the disposal of this writ petition and shall not influence the adjudication of the merits of the suit.

Sd/-
(K. V. ARAVIND)
JUDGE

SJK
List No.: 1 Sl No.: 25