HC-KAR

NC: 2026:KHC:64694
WP No. 35302 of 2026

CNR: KAHC010771392026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF NOVEMBER, 2026

BEFORE

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

WRIT PETITION NO. 35302 OF 2026 (GM-CPC)

BETWEEN:

1. SMT. SAMPAMMA
W/O LINGAPPA
D/O LATE KALLAIAH
AGED ABOUT 61 YEARS
R/ AT BOMMASANDRA
VILLAGE, ATTIBELE HOBLI
ANEKAL TALUK
BANGALORE URBAN DISTRICT-560 099

REPRESENTED SPA HOLDER
SRI. HARISH,
S/O. LATE LINGAPPA,
AGED ABOUT 45 YEARS,
R/AT BOMMASANDRA VILLAGE,
ATTIBELE HOBLI,
ANEKAL TALUK,
BANGALORE URBAN DISTRICT - 560 099

...PETITIONER

(BY SRI. RANGANATH REDDY R., ADVOCATE)

Digitally signed by VIJAYA P
Location: High Court of Karnataka

AND:

1. SRI N. KRISHNAPPA
S/O LATE NALLAPPA@
CHIKKA NALLAPPA
AGED ABOUT 77 YEARS

2. SRI GIRISHA K
S/O N. KRISHNAPPA
AGED ABOUT 49 YEARS

3. SRI JAYAWANTH G
S/O GIRISHA K
AGED ABOUT 20 YEARS

4. SRI NAGESH
S/O N.KRISHNAPPA
AGED ABOUT 46 YEARS

5. SRI. RAJESH B.K
S/O N. KRISHNAPPA
AGED ABOUT 44 YEARS

RESPONDENTS 1 TO 5 ARE
R/AT KRISHNAPPA
BUILDING, NEAR SRIRAMA
TEMPLE, BOMMASANDRA
ATTIBELE HOBLI, ANEKAL TALUK
BANGALORE URBAN DISTRICT - 560 099

6. SRI SRINIVAS REDDY
S/O M KRISHNA REDDY,
AGED ABOUT 54 YEARS,
R/AT NIRMAN NIVAS,
NO. 354/1, HEBBAGODI VILLAGE,
ATTIBELE HOBLI, ANAKEL TALUK,
BENGALURU DISTRICT-560099

…RESPONDENTS

(BY SRI VIGNESHWARA S. SHASTRI, SENIOR COUNSEL FOR SRI. V. SHIVAKUMAR, ADVOCATE FOR C/R1 T R6)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SETTING ASIDE THE ORDER DATED 29.10.2026 PASSED BY THE IV ADDITIONAL CIVIL JUDGE AND JMFC, ANEKAL, IN O.S. NO.499/2023, ON I.A. NO.VI OF 2026, PRODUCED AS ANNEXURE-A 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 is filed impugning the order dated 29.10.2026 passed on I.A. No.VI, whereby the application filed under Order XXVI Rule 9 read with Section 151 of the CPC, seeking appointment of a Court Commissioner, has been rejected.

2. Learned counsel appearing for the petitioner submits that the suit is instituted seeking a declaration that suit schedule 'C' and 'E' properties are the only access pathways to reach the plaintiff's schedule 'A' property and for a consequential relief of permanent injunction restraining defendant Nos.1 to 5 from obstructing or closing the schedule 'C' and 'E' properties.

2.1 It is submitted that schedule 'C' and 'E' properties constitute pathways providing access to schedule 'A' property of the plaintiff and that the said pathways are being obstructed. It is further submitted that the defendants, in their written statement, have denied the existence of schedule 'C' and 'E'

properties. In view of the dispute regarding the existence and identity of the schedule properties, an application has been filed seeking appointment of a Court Commissioner to ascertain the relevant factual aspects in respect of all the schedule properties.

2.2 It is contended that, notwithstanding the completion of recording of evidence, the appointment of a Court Commissioner is not sought for the purpose of collecting evidence. Rather, such appointment is necessary to ascertain the identity and existence of the disputed properties. It is submitted that, where a dispute arises with regard to the identity or existence of properties, appointment of a Court Commissioner is permissible.

2.3 In support of the aforesaid submissions, reliance is placed on the judgment of this Court in ***Sri Shadaksharappa v. Kumari Vijayalaxmi and Others [W.P. No.201274/2022, decided on 24.01.2023]***.

3. *Per contra*, learned Senior Counsel appearing for respondent Nos.1 to 6 submits that the existence of schedule

'C' and 'E' properties has been specifically denied in the written statement and that the petitioner has admitted the existence of an alternative access to schedule 'A' property. It is contended that the application seeking appointment of a Court Commissioner is intended to fill up the lacunae in the petitioner's case or to overcome the admissions already made.

3.1 It is further submitted that this Court, in W.P. No.23318/2024, decided on 19.02.2025, had directed expeditious disposal of the suit within six months. The present application is stated to have been filed with the intention of delaying the disposal of the suit, particularly in the context of the interim order passed in the said proceedings.

3.2 It is contended that, in view of the admission regarding the existence of an alternative access to schedule 'A' property, the necessity of appointing a Court Commissioner to ascertain the existence of schedule 'C' and 'E' properties, for the purpose of seeking the declaration prayed for, does not arise. In the circumstances, it is submitted that the Trial Court is justified in rejecting the application.

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

5. The suit is instituted seeking a declaration that suit schedule 'C' and 'E' properties constitute the only access to reach schedule 'A' property. The existence of schedule 'C' and 'E' properties is disputed by the respondents/defendants. It is not in dispute that the recording of evidence before the Trial Court is complete. The application is filed seeking appointment of a Court Commissioner to ascertain the factual position of all the suit schedule properties, particularly the existence of schedule 'C' and 'E' properties.

6. The Trial Court proceeded to reject the application on the ground that appointment of a Court Commissioner would amount to collection of evidence, which is impermissible. In this regard, the judgment of this Court in ***Shadaksharappa*** (supra) is relevant for consideration.

7. In the aforesaid judgment, this Court has categorically held that appointment of a Court Commissioner is permissible at any stage of the suit, even before commencement of

recording of evidence. It is further held that appointment of a Court Commissioner can be sought even for the purpose of establishing the case of either of the parties. This Court has also observed that where the dispute relates to boundaries, encroachment or easementary rights, such as rights relating to air, light, pathway, road or watercourse, appointment of a Court Commissioner is desirable. It is further held that the report of the Court Commissioner is not conclusive in nature.

8. Having regard to the facts of the present case, the dispute relates to the existence of schedule 'C' and 'E' properties. Appointment of a Court Commissioner and submission of a report pursuant thereto would not, by themselves, have the effect of nullifying or overriding any admission already made by either of the parties. In the event of any dispute regarding the report submitted by the Court Commissioner, both parties would have the opportunity to file their objections and, if necessary, to cross-examine the Court Commissioner.

9. In that view of the matter, rejection of the application seeking appointment of a Court Commissioner on the ground that the same would amount to collection of evidence cannot be sustained. The reasons assigned by the Trial Court are contrary to the principles laid down by this Court in ***Shadaksharappa*** (supra).

10. In the above circumstances, the following:

O R D E R

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

II. The impugned order dated 29.10.2026 is hereby ***set aside***.

III. I.A. No.VI 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. Having regard to the interim order operating against the respondents and to ensure that the petitioner herein does not delay the proceedings, the Trial Court is directed to fix a time schedule for inspection by the Court Commissioner and submission of the report.

VI. In view of the directions issued in W.P. No.23318/2024, the Trial Court shall expedite the disposal of the suit.

Sd/-
(K. V. ARAVIND)
JUDGE

VBS
List No.: 2 Sl No.: 7