



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 8TH DAY OF APRIL, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.14655/2021 (GM-CPC)

BETWEEN:

SMT. KEMPAMMA
W/O LATE VEERAIHAH @ ERAIAH
AGE 62 YEARS
R/O. DEVIRAMMANAHALLI VILLAGE
KASABA HOBLI, NANJANAGUD TALUK
MYSORE DIST.

...PETITIONER

(BY SRI. CHINMAY KURANDWAD, ADV., FOR
SRI. R.C. NAGARAJ, ADV.,)

AND:

SRI. SWAMY ALIAS DORESWAMY
S/O KULLAPPA
AGED 67 YEARS
R/O DEVIRAMANAHALLI VILLAGE
KASABA HOBLI, NANJANAGUD TALUK
MYSORE DISTRICT.

...RESPONDENT

(V.C.O. DTD:04.10.2021, SERVICE OF NOTICE TO
RESPONDENT IS H/S AND PLACED EXPARTE)

THIS W.P. IS FILED UNDER ARTICLE 226 AND 227 OF
THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE
IMPUGNED ORDER DATED 22.07.2021 PASSED BY THE 1ST
ADDITIONAL CIVIL JUDGE AND JMFC, NANJANGUD ON
I.A.NO.4 IN O.S.NO.710/2014 PRODUCED AT ANNEXURE-A AS
ILLEGAL & ETC.





THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This petition is filed challenging the order dated 22.07.2021 passed on IA.No.4 in OS.No.710/2014 by the I Additional Civil Judge and JMFC, Nanjangud (for short 'the trial Court').

2. Heard Sri.Chinmay Kurandwad, learned counsel for Sri.Nagaraj R.C., learned counsel appearing for the petitioner and meticulously perused the material available on record.

3. Despite service of notice, the respondent remained absent.

4. The petitioner/plaintiff filed OS.No.710/2014 seeking a declaration that she is the absolute owner of the schedule 'B' property, along with the consequential relief of possession. In the said suit, during the course of trial, the



GPA holder one Smt.Mahadevamma filed an application under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') seeking the appointment of a Civil Engineer as Court Commissioner to measure the suit schedule property and to trace out the encroached portion of the schedule 'B' property by the defendant. The said application was dismissed by the trial Court mainly on the ground that the description of the schedule 'B' property in the plaint was specific with regard to its measurement and boundaries (check bandi), and that the defendant had objected that the 'B' schedule property is owned by them. The trial Court also recorded a finding that until the plaintiff proves her ownership, the application could not be entertained. It is to be noticed that the petitioner/plaintiff has approached before the trial Court with a specific prayer seeking declaration of ownership over the schedule 'B' property as well as possession, alleging that the defendant has encroached upon the said property, which forms the part of schedule 'A' property.



5. The factum of encroachment is required to be ascertained by physical inspection by a Court Commissioner. Hence, in my considered view, the trial Court has committed a grave error in rejecting the application on the ground that the measurement and description of the 'B' schedule property is clear and that the plaintiff must first prove her ownership. While it is not in dispute that the burden is on the plaintiff to prove the ownership of the 'B' schedule property during the course of trial. However, that same cannot be a ground to reject the application for appointment of a Court Commissioner particularly when the plaintiff is asserting that the defendant has encroached the 'B' schedule property. The said encroachment is required to be established by the plaintiff by way of pleading, by adducing oral and documentary evidence and in addition she is also entitled to seek the appointment of Court Commissioner to find out the encroachment. However, it is also to be noticed that the application for appointment of a Court Commissioner was filed at an initial stage of the trial.



6. In the circumstances, it would be appropriate to permit the petitioner to press the application in IA.No.4 after the conclusion of the trial and the trial Court shall consider the said application, if need arises, based on the evidence available on record. Accordingly, the writ petition is **allowed**. With the above liberty and observations, the impugned order dated 22.07.2021 passed on IA.No.4 in OS.No.710/2014 by the I Additional Civil Judge and JMFC, Nanjangud is hereby set aside and consequently, IA.No.4 stands restored. The trial Court shall consider IA.No.4 after the conclusion of the trial, keeping in mind law laid down by this Court in the case of ***Shadaksharappa v. Kumari Vijayalaxmi and Others***¹

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

ABK
List No.: 1 Sl No.: 19

¹ WP.No.201274/2022 dated 24.01.2023