



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 24TH DAY OF MARCH, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.21322/2021 (GM-CPC)

BETWEEN:

SRI. BETTE GOWDA
S/O LATE NARASHIME GOWDA
AGED ABOUT 78 YEARS
R/AT NO.194, NEAR WATER TANK
KUMBAR KOPPAL, MYSURU-570004
REPRESENTED BY GPA HOLDER
K.B. VIJAY KUMAR.

...PETITIONER

(BY SRI. CHIDANANDA P, ADV.,)

AND:

SMT. M.V. VIJAYALAKSHMI
W/O KRISHNE GOWDA
AGED ABOUT 56 YEARS
R/AT NO.38, IST CROSS
ADI PAMPA ROAD
V V MOHALLA, MYSURU-570002.

...RESPONDENT

(BY SRI. K.B. CHANDRA SHEKARA SWAMY, ADV.,)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI SETTING ASIDE OR QUASHING THE ORDER DTD.7.9.2021 PASSED ON IA NO.13 BY THE HON'BLE PRL. FIRST CIVIL JUDGE AND JMFC AT MYSORE IN O.S.NO.255/2012 AT ANNEXURE-F & ETC.





THIS PETITION HAVING BEEN HEARD AND RESERVED ON 18.03.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

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

CAV ORDER

This writ petition is filed challenging the order dated 07.09.2021 passed on I.A.No.13 in O.S.No.255/2012, by the III Additional Civil Judge and JMFC, Mysuru.

2. The learned counsel for the petitioner submits that the petitioner-plaintiff has filed a suit for perpetual injunction against the defendant. In the said suit, the defendant disputed the description of the suit schedule property and to find out the factual matrix, the plaintiff filed an application for appointment of the Court Commissioner to survey and measure the suit schedule property as well as site No.228 claimed by the defendant. However, the Trial Court, under the impugned order, rejected the application solely on the ground that the application is filed belatedly and since the suit is for injunction, the plaintiff is required to prove his lawful



possession. It is submitted that when the defendant has disputed the description of the property in question, the appointment of the Court Commissioner is a must. Hence, he seeks to allow the writ petition.

3. *Per contra*, the learned counsel for the respondent-defendant supports the impugned order of the Trial Court and submits that the plaintiff is required to prove his lawful possession over the suit schedule property by adducing the material evidence and therefore, filing of the application for appointment of the Court Commissioner would not arise. Hence, he seeks to dismiss the writ petition.

4. I have heard the arguments of the learned counsel for the petitioner, learned counsel for the respondent and perused the material available on record.

5. The material on record indicates that the plaintiff has filed a suit in O.S.No.255/2012 against the defendant for the relief of injunction by contending that



the defendant and his agents, servants are interfering with the suit schedule property and are trying to put up a structure in a portion of the suit schedule property. The suit schedule property is shown as a residential house with asbestos sheet roofing at site No.227, carved out of Sy.Nos.228, 229/1, 229/2, 229/3, 231/2, 232 and 273/2 totally measuring 14 acres 5 guntas, out of which a site measuring East to West: 40+45/2 feet and North to South: 42 feet carved out in Sy.No.229/2 of Hebbal Village, Kasaba Hobli, Mysuru Taluk. The chakbandi to the schedule is also shown more particularly towards the western side as the property of Vanivilas House Building Co-operative Society. The defendant filed a detailed written statement denying the assertions of the plaint. It is averred that the description of the suit schedule property and the measurement is not correct. The same was disputed by the defendant and without seeking the relief of declaration, the suit is not maintainable. It is further averred that the defendant has purchased site



No.228 carved out of the lands bearing Sy.Nos.228, 229/1, 229/3, 231/2, 232 and 273/2 of Hebbal Village, Kasaba Hobli, Mysuru Taluk. It is also averred that the properties were acquired from Vanivilas Mohalla Gruha Nirmana Sahakari Sangha Ltd. under the registered sale deed dated 24.02.2007 and the defendant is in the actual physical possession of the property.

6. The plaintiff filed an application under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, seeking for appointment of the Court Commissioner i.e. Taluk Surveyor to ascertain in which survey number, the suit schedule property as well as site No.228 claimed by the defendant are situated. The affidavit accompanying the application filed by the plaintiff indicates that the sketch annexed to the sale deed of the defendant goes to show that site No.228 alleged to have been purchased by the defendant is situated in Sy.No.273/2 and the suit schedule property i.e. the site in question is carved out of Sy.No.229/2. In view of the aforesaid assertions in the



affidavit accompanying the application, the plaint averments, the averments in the written statement and the objections to the application, it is evident that there is a dispute with regard to the identification of the property claimed by the plaintiff as well as the defendant. The burden is on the plaintiff to establish his lawful possession over the suit schedule property by adducing the oral and documentary evidence before the Trial Court in order to grant the relief sought in the plaint. The Trial Court ought to have allowed the application by directing the Surveyor to conduct the survey to find out in which survey number the site in question claimed by the plaintiff as well as the defendant's site, were carved out. In my considered view, unless the existence and the actual measurement of the disputed sites are found out by appointing the Court Commissioner, it would be difficult for the Trial Court to grant the relief sought in the plaint. Hence, I am of the opinion that the appointment of the Court Commissioner would aid the Trial Court in adjudicating the dispute



between the parties more so when the defendant specifically disputes the extent, measurement and description of the suit schedule property and no prejudice would be caused to the defendant if the property is measured. The Trial Court has failed to consider the fact that the defendant would have all the opportunities to question the Court Commissioner's report in accordance with law. In case the Court Commissioner's report is contrary to the factual matrix or is against the defendant, it is open for the defendant to challenge the same.

7. For the aforementioned reasons, I proceed to pass the following:

ORDER

- (i) The writ petition is allowed.
- (ii) The impugned order dated 07.09.2021 passed on I.A.No.13 in O.S.No.255/2012, by the III Additional Civil Judge and JMFC, Mysuru, is set aside. Consequently, I.A.No.13 filed by the plaintiff is allowed.



(iii) The Trial Court shall appoint the Court
Commissioner as sought by the plaintiff.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 2 Sl No.: 1