HC-KAR

NC: 2026:KHC-K:4488
WP No. 200784 of 2025

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 22ND DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 200784 OF 2025 (GM-CPC)

BETWEEN:

PRAKASH
S/O SHARANAPPA TUPPAD,
AGE: 49 YEARS,
OCC: AGRICULTURE,
R/O CHIKKASINDAGI,
TQ. SINDAGI.

...PETITIONER

(BY SRI. MANJUNATH GINNI, ADVOCATE)

AND:

Digitally signed by NIJAMUDDIN JAMKHANDE
Location: HIGH COURT OF KARNATAKA

MALAKAPPA
S/O BHIMAPPA NIGADI,
AGE: 69 YEARS,
OCC: AGRICULTURE,
R/O CHIKKASINDAGI,
TQ. SINDAGI-586103.

...RESPONDENT

(BY SRI. YASHAS S. DIKSHIT, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 14.02.2025 PASSED BY THE LEARNED CIVIL JUDGE AND JMFC SINDAGI ON I.A NO.XII IN O.S.NO.302/2016 AT ANNEXURE-E AND ALLOW THE

APPLICATION FILED BY THE PLAINTIFF/PETITIONER IA NO.XII IN O.S NO.302/2016, AND ETC.,

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

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

This petition by the plaintiff in O.S.No.302/2016 is directed against the impugned order dated 14.02.2025, whereby the application I.A.No.XII filed by the petitioner/plaintiff under Order XXVI Rule 9 of CPC for appointment of ADLR of Sindagi as Court Commissioner to conduct local inspection of the suit schedule property and to submit a report was rejected by the trial Court.

2. A perusal of the material on record will indicate that the petitioner/plaintiff instituted the aforesaid suit against the respondent/defendant for declaration of mandatory injunction and other reliefs in relation to the suit schedule immovable property. The said suit is being contested by respondent/defendant. After completion of trial, the petitioner/plaintiff filed the instant application in

I.A.No.XII under Order XXVI Rule 9 of CPC for appointment of ADLR of Sindagi as Court Commissioner to conduct local inspection of the suit schedule property. The said application has been opposed by the respondent-defendant and the trial Court proceeded to pass the impugned order rejecting the application on the ground that the same would tantamount to collection of evidence. In this context, the trial Court failed to consider and appreciate that it is the specific contention of the petitioner/plaintiff that the respondent/ defendant had illegally and high handedly trespassed and encroached upon a portion of the suit schedule property on the eastern side, the respondent/defendant had categorically disputed and denied the said allegation. There was a serious dispute in relation to location, identity, measurement, schedule, etc., in respect of the property claimed by both sides which would necessarily require obtaining a report from the Court Commissioner by

conducting local inspection, in addition to the evidence already available on record.

3. It is also pertinent to state that no prejudice could be said to be caused to the respondent/defendant, if a Court Commissioner is appointed for the purpose of conducting local inspection, since respondent/defendant would be entitled to participate in the commission work and file objections to the Commissioner's Report and examine/cross-examine the Court Commissioner, if he so desires.

4. Under these circumstances, in the light of the principles enunciated by the Apex Court in relation to appointment of Court Commissioner in the case of ***Rahul S. Shah v Jinendra Kumar Gandhi and Others, ((2021) 6 SCC 418)*** and in the case of ***Shadaksharappa v Kumari Vijayalaxmi and Others (ILR 2023 KAR 3983)***, I am of the considered opinion that the impugned order passed by the trial Court rejecting I.A.No.XII has clearly occasioned failure of

justice warranting interference by this Court in the present petition.

5. As a result, I pass the following:

ORDER

i. The petition is hereby ***allowed***.

ii. The impugned order dated 14.02.2025 on passed by the Civil Judge and JMFC, Sindagi on I.A.No.XII in O.S.No.302/2016 is hereby set aside.

iii. I.A.No.XII filed by the petitioner/plaintiff is hereby allowed.

iv. Liberty is reserved in favour of the petitioner and respondent to file their respective memos of instructions before the ADLR / Court Commissioner, who shall consider the same and proceed further in accordance with law.

v. Liberty is also reserved in favour of petitioner and respondent to file objections to the Commissioner's Report and

examine/cross-examine him, if they so desire.

vi. All rival contentions on all aspects of the matter including the report of the Commissioner, his evidence, etc., are kept open and no opinion is expressed on the merits/demerits of the rival contentions.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

VNR
LIST NO.: 2 SL NO.: 10
CT;SI