



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

BEFORE

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

WRIT PETITION NO. 6021 OF 2026 (GM-CPC)

BETWEEN:

1. SMT REVAMMA
D/O, LATE GURUMALLAPPA
W/O, MADAPPA
AGED ABOUT 65 YEARS,
R/AT, HARAPE HOBLI,
HIRE BEGUR VILLAGE, KULAGANA POST,
CHAMARAJANAGARA DISTRICT- 571109.
2. SMT. SUNDRAMMA
D/O, LATE GURUMALLAPPA
W/O, MALLANNA
AGED ABOUT 53 YEARS
R/AT, VALAGERE VILLAGE,
KASABA HOBLI, NANJUNGUD TALUK,
MYSURU DISTRICT-571315.
3. SMT. BASAMANNI
D/O, LATE GURUMALLAPPA
W/O, MAHADEVAPPA
AGED ABOUT 47 YEARS
R/AT, HARAPE HOBLI,
HIRE BEGUR VILLAGE, KULAGANA POST,
CHAMARAJANAGARA DISTRICT- 571109.
4. SMT. GOWRAMMA
W/O, LATE GURUMALLAPPA
AGED ABOUT 78 YEARS
R/AT, HEDETHALE VILLAGE,
DODDAKAVALANDE HOBLI,
NANJANGUD TALUK,
MYSURU DISTRICT-571312.





5. MR. MAHESHA
S/O, LATE GURUMALLAPPA
AGED ABOUT 45 YEARS,
R/AT, HEDETHALE VILLAGE,
DODDAKAVALANDE HOBLI, NANJANGUD TALUK,
MYSURU DISTRICT-571312.
6. MR. BASAVANNA
S/O, KOOSANNA
AGED ABOUT 26 YEARS
R/AT, HEDETHALE VILLAGE,
DODDAKAVALANDE HOBLI,
NANJANGUD TALUK,
MYSURU DISTRICT-571312.

...PETITIONERS

(BY SRI. SANDEEP K., ADVOCATE)

AND:

1. SMT. THAYAMMA
W/O LATE MAHADEVAPPA
AGED ABOUT 53 YEARS
R/AT, HEDETHALE VILLAGE,
DODDAKAVALANDE HOBLI,
NANJANGUD TALUK,
MYSURU DISTRICT-571312.
2. MR. NAGESH
S/O, LATE MAHADEVAPPA
AGED ABOUT 30 YEARS,
R/AT, HEDETHALE VILLAGE,
DODDAKAVALANDE HOBLI,
NANJANGUD TALUK,
MYSURU DISTRICT-571312.
3. MR. RAJANNA
S/O, LATE MAHADEVAPPA
AGED ABOUT 25 YEARS
R/AT, HEDETHALE VILLAGE,
DODDAKAVALANDE HOBLI,
NANJANGUD TALUK,
MYSURU DISTRICT-571312.
4. MR. NAGANNA



S/O, LATE MAHADEVAPPA
AGED ABOUT 40 YEARS
R/AT, HEDETHALE VILLAGE,
DODDAKAVALANDE HOBLI,
NANJANGUD TALUK,
MYSURU DISTRICT-571312.

5. SMT. MAHADEVAMMA
W/O LATE GURUSWAMY
R/AT, HEDETHALE VILLAGE,
DODDAKAVALANDE HOBLI,
NANJANGUD TALUK,
MYSURU DISTRICT-571312.

6. SMT. NAGAMMA
D/O GURUMALLAPPA
AGED ABOUT 45 YEARS
R/AT, HEDETHALE VILLAGE,
DODDAKAVALANDE HOBLI, NANJANGUD TALUK,
MYSURU DISTRICT-571312.

...RESPONDENTS

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 30/01/2026 PASSED BY HONBLE I ADDITIONAL CIVIL JUDGE AND JMFC AT NANJUNGUDU ON IA NO.11 FILED UNDER ORDER 26 RULE 9 OF CPC IN OS NO. 317/2017 WHICH IS AT ANNEXURE-A AND CONSEQUENTLY DISMISS THE IA NO. 11 FILED UNDER ORDER 26 RULE 9 OF CPC FILED BY PLAINTIFFS.

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

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

ORAL ORDER

This petition by defendant Nos.1(a) to 1(e), 2 and 3 in O.S.No.317/2017 is directed against the impugned order dated 30.01.2026 passed on I.A.No.11 by the I Additional Civil Judge and



JMFC, Nanjanagud (for short “the Trial Court”), whereby the application, I.A.No.11 filed by the respondents-plaintiffs under Order 26 Rule 9 CPC to appoint a Court Commissioner to conduct local inspection was allowed by the Trial Court, by holding as under:

“ ORDER ON I.A.No.XI

The applicant/2nd plaintiff has filed this application under Order 26 Rule 9 R/w Sec. 151 of C.P.C, to appoint court commissioner to measure the encroachment made in B Schedule property and submit report for proper adjudication of the suit.

2. In the Annexed affidavit it is contended that, the suit seeking declaration and mandatory injunction and possession of the suit schedule property against the defendants. The defendants have encroached the vacant site belonged to plaintiff and the defendants have denied the said encroachment in their written statement. The suit is filed for possession for the illegal encroachment made by the defendants. Hence, it is necessary to appoint a court commissioner to measure the encroachment made by the defendants and report it to the court for the property adjudication of the matter. The balance of convenience lies in our favour and no injustice would cause to other side if the IA is allowed. If the IA is not allowed, the plaintiff will be put to much hardship and injury. Hence, prays the allow the application.



3. On the other hand, defendants have filed objections to IA No.XI contending that, the application is not maintainable either in law or on facts and liable to be dismissed. The facts mentioned in the application are false and incorrect and there are no specific points to accept the application as contended in the affidavit. The plaintiff has filed this suit for the relief of Declaration mandatory injunction and possession of the suit schedule property. At present the evidence of plaintiff and defendants are over and the suit has come to its last stage for the purpose of arguments of plaintiff. Now, the plaintiff has filed this application. As contended by the plaintiffs, the defendants have not encroached any property and they are not in illegal possession. The plaintiff has wrongly mentioned the measurements and there are no grounds to allow this application. Hence, prays to dismiss the I.A.

4. Heard and perused.

5. In view of the above, the following points arises for consideration;

1. Whether applicant has made out the case for filing I.A.No.XI under Order 26 Rule 9 R/w Sec. 151 of C.P.C.?

2. What Order?

6. This court answers the above points are as follows;

Point No.1 : - In the Affirmative

Point No.2:- As per the final order for the following.

REASONS:

7. Point No.1:- This is the application filed by the application filed by the applicant to measure the



encroachment made by defendants in suit schedule B property and to report the encroachment made by the defendants. Since the suit is filed by the plaintiff alleging that the defendants have encroached the suit schedule property and sought for the relief of declaration, mandatory injunction and possession and it is just and necessary to appoint court commissioner to ascertain the same. Accordingly grounds are made out to allow the application and this court proceed to pass the following:

ORDER

The application filed by the plaintiff under Order 26 Rule 9 R/w Sec. 151 of C.P.C. is hereby allowed.

The Taluk surveyor, Nanjangudu is here by appointed as Court Commissioner to survey the suit schedule B Property and to report the encroachment made by the defendants in suit schedule property.

Issue commissioner warrant after M.O.I filed by both parties.

Call on 02.03.2026."

2. Heard learned counsel for the petitioners and perused the material on record.

3. For the order proposed, issuance of notice to the respondents is dispensed with.

4. Upon re-appreciation, re-evaluation and reconsideration of the entire material on record, I am of the considered opinion that the impugned order passed by the Trial



Court is in conformity with well settled principles of law governing appointment of Court Commissioners for the purpose of conducting local inspection as enunciated by this Court in the case of ***Sri. Shadaksharappa v Kumari Vijayalaxmi & others – 2023 SCC OnLine KAR 53***

5. Under these circumstances, I am of the considered opinion that the impugned order cannot be set to suffer by any illegality or infirmity nor can the same be said to be capricious or perverse or having occasioned failure of justice warranting interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India as held by the Apex Court in the cases of ***Radhey Shyam Vs. Chhabi Nath – (2015) 5 SCC 423, K.P. Natarajan Vs. Muthalammal – AIR 2021 SC 3443 and Mohammed Ali Vs. Jaya – (2022) 10 SCC 477.***

6. In the result, I pass the following:

ORDER

- (i) The petition is hereby disposed of without interfering with the impugned order.



- (ii) Liberty is reserved in favour of both parties to file their respective Memos of Instructions before the Court Commissioner.
- (iii) Liberty is reserved in favour of both parties to file objections to the Commissioner's Report.
- (iv) Liberty is reserved in favour of both parties to examine / cross-examine the Court Commissioner, if they so desire.
- (v) All rival contentions on all aspects of the matter are kept/left open and no opinion is expressed on merits/demerits of the rival contentions.

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