



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2026

BEFORE

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

WRIT PETITION No. 15547 OF 2025 (GM-CPC)

BETWEEN:

1. MR. R. RAGHU,
S/O. LATE. RAMANNA,
AGED ABOUT 55 YEARS,
OCCUPATION: RUNNING THE HOTEL,
5TH CROSS, SIDDAVIRAPPA EXTENSION,
DAVANGERE - 577002.

...PETITIONER

(BY SRI. K. SHASHIKANTH PRASAD, ADVOCATE)

AND:

1. MR. S. M. VENKATESH,
S/O. MR. MARISWAMY,
AGED ABOUT 70 YEARS.
2ND CROSS, JAYANAGARA,
SHIVAMOGGA-577 210,
ADDITIONAL ADDRESS:
TORANAGATTE VILLAGE,
JAGALUR TALUK - 577 528,
DAVANGERE DISTRICT.

...RESPONDENT

(BY SRI H. KARUNAKARA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 21.03.2025 PASSED IN THE IA No.2 OF RA No. 104/2023 ON THE FILE OF THE 1ST ADDL. SENIOR CIVIL JUDGE AND JMFC DAVANAGERE, ANNEXURE-H.





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

CORAM: HON'BLE MR. JUSTICE K. V. ARAVIND

ORAL ORDER

Heard Sri K. Shashikanth Prasad, learned counsel for the petitioner, and Sri H. Karunakara, learned counsel for the respondent.

2. The present writ petition challenges the order dated 21.03.2025, whereby the application filed by the petitioner under Order XXVI Rule 9 of the CPC in R.A. No.104/2023 for appointment of a Court Commissioner has been rejected by the I Additional Senior Civil Judge and JMFC, Davanagere.

3. The petitioner instituted a suit in O.S. No.506/2013 seeking the relief of permanent injunction. The said suit came to be dismissed by judgment dated 21.04.2023. Aggrieved thereby, the petitioner has preferred R.A. No.104/2023. In the said appeal, the petitioner filed an application under Order XXVI Rule 9 of the CPC, contending that appointment of a Court Commissioner is necessary to ascertain the actual possession of



the suit property. The appellate Court has rejected the said application.

4. Sri K. Shashikanth Prasad, learned counsel appearing for the petitioner, submits that the impugned order is unsustainable, inasmuch as the necessity for appointment of a Court Commissioner to ascertain the actual possession of the suit property has not been considered. He further submits that the appellate Court ought to have appointed a Commissioner for the purpose stated in the application, as the same would have assisted the Court in effectively adjudicating the *lis*.

5. Considered the submissions made by the learned counsel for the petitioner. This Court is not inclined to entertain the present writ petition for more than one reason.

6. During the pendency of O.S. No.506/2013, the petitioner filed two applications seeking appointment of a Court Commissioner to ascertain the actual possession of the suit property. Both the applications were rejected by the trial Court by orders dated 14.01.2022 and 16.02.2023, which have attained finality. A similar application, seeking an identical relief, has been filed in R.A. No.104/2023. The appellate Court,



by referring to the judgment of this Court in ***Puttappa v. Ramappa***, reported in ***AIR 1996 Karnataka 257***, wherein it is held as under:

" In a suit for injunction the question as to who is in possession of the property is a matter to be decided by the court on the basis of the evidence, either oral or documentary, to be adduced by the parties. That function cannot be delegated to a commissioner who cannot find out as to who is in possession of the property."

It is held that the appointment of a Court Commissioner cannot be made in a suit filed for the relief of permanent injunction.

7. This Court finds no error or infirmity in the order passed by the appellate Court warranting interference. The impugned order is supported by cogent reasons and is also in conformity with the judgment of this Court. The writ petition lacks merit and is accordingly ***rejected***.

Sd/-
(K. V. ARAVIND)
JUDGE