



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 9TH DAY OF APRIL, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.17608/2021 (GM-CPC)

BETWEEN:

SRI. VEERAPPA
SINCE DECEASED BY LRS.

1. SMT. DAKSHAYANI
AGED 64 YEARS
W/O LATE SRI. VEERAPPA.
2. SRI. MANJUNATH @ MANU
AGED 46 YEARS
S/O LATE SRI. VEERAPPA.

BOTH ARE R/AT ¼
OPP GOVERNMENT HOSPITAL
K N PURA EXTENSION
KYATHAMARANAHALLI
NAZARBAD MOHALLA
MYSORE - 570 019.

...PETITIONERS

(BY SRI. SUBHASH SRINIVASA RANGACHAR, ADV.,)

AND:

SRI. SHAAMU
AGED 73 YEARS
S/O LATE SRI PANDIT KERPANNA
R/AT 1/6, OPP GOVERNMENT HOSPITAL
KYATHAMARNAHALLI
K N PURA EXTENSION





NAZARBAD MOHALLA
MYSORE - 570 019.

...RESPONDENT

(BY SRI. Y.V. PRAKASH, ADV., FOR
SRI. Y.K. NARAYANA SHARMA, ADV.,)

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THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDERS DTD 16.08.2021 PASSED ON I.A.NO.6 APPOINTING A COURT COMMISSIONER IN O.S.NO.374/2014 ON THE FILE OF V ADDL. CIVIL JUDGE AND JMFC AT MYSORE, VIDE ANNEX-F, CONSEQUENTLY DISMISS I.A.NO.6 & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 08.04.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

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

CAV JUDGMENT

This petition is filed challenging the order dated 16.08.2021 passed on I.A.No.VI in O.S.No.374/2014 by the V Additional Civil Judge and JMFC, Mysuru (hereinafter referred to as 'the Trial Court').

2. Sri.Subhash Srinivasa Rangachar, learned counsel for the petitioners submits that the Trial Court has allowed the application of the plaintiff for appointment of the Court Commissioner without appreciating the dispute



between the parties in its proper perspective. It is submitted that the respondent-plaintiff has asserted that the petitioners-defendants have encroached and put up the construction in Schedule 'B' property which has been denied by the defendants in their written statement by specifically stating that the Schedule 'B' property was purchased by the defendants vide registered sale deed dated 14.10.1992 and in the year 1992-93, the construction was put up by leaving set back. However, the Trial Court proceeded to allow the application for appointment of the Court Commissioner to find out whether the defendants have put up the construction in the Schedule 'B' property by encroachment. It is further submitted that the plaintiff himself has admitted in his cross-examination that there is a sajja on the western side of the Schedule 'B' property of the defendants and further admitted the construction of house on Schedule 'A' property about 21 feet. The said finding of the Trial Court clearly demonstrates that the defendants have put up the



construction within Schedule 'B' property which is owned by them and there is no encroachment. It is also submitted that the plaintiff purchased the suit schedule property in the year 1996 and the suit is filed in the year 2014 alleging that the window is erected on the western side of the Schedule 'B' property and seeking permanent injunction against the defendants to not put up any further construction in the Schedule 'B' property without leaving set back of 1 meter and such a suit is not maintainable without seeking the relief of declaration. Hence, he seeks to allow the writ petition by setting aside the impugned order.

3. *Per contra*, Sri.Y.V.Prakash, learned counsel appearing for Sri.Y.V.Narayana Sharma, learned counsel for the respondent supports the impugned order of the Trial Court and submits that it is the case of the plaintiff that the defendants, without leaving set back have put up construction in the Schedule 'B' property creating right over the Schedule 'A' property by way of easement and to



ascertain whether there is set back or not, the appointment of the Court Commissioner is necessary. Hence, he seeks to dismiss the writ petition.

4. I have heard the learned counsel for the petitioners, learned counsel for the respondent and meticulously perused the material on record. I have given my anxious consideration to the submissions advanced on both the sides.

5. The respondent herein filed O.S.No.374/2014 for the relief of mandatory injunction against the defendants to remove the illegally erected windows and ventilators put up on the western side of the Schedule 'B' property, opening out to the Schedule 'A' property and the relief of permanent injunction against the defendants from making any further construction in 1 meter width towards the Schedule 'B' property, by leaving the same as the set back area. The defendants filed a detailed written statement denying the assertions made in the plaint. The



written statement indicates that the defendants purchased the Schedule 'B' property in the year 1992 and they put up construction of a RCC house in the ground floor by leaving set back towards the western side of the property and the plaintiff has put up illegal construction 3 years back without leaving any set back to his property. With these pleadings, the evidence was recorded by the Trial Court.

6. The plaintiff filed an application in I.A.No.VI under Order XVI Rule 9 of the Code of Civil Procedure, 1908, seeking to appointment of the Court Commissioner for inspection of the plaint schedule properties and report regarding the construction made by the defendants in the Schedule 'B' property. The said application was allowed under the impugned order.

7. It is the specific case of the plaintiff that Schedule 'A' property is owned by the plaintiff and Schedule 'B' property by the defendants and the defendants, without leaving set back towards the western



wall of the Schedule 'B' property, have put up the construction and the western wall itself is a dividing line between Schedule 'A' and 'B' properties. It is further case of the plaintiff that the defendants have no right of whatsoever nature over the vacant space forming part of Schedule 'A' property and the defendants put up the construction of the building on the ground floor and now in the first floor and erecting windows and ventilators on the western side of the wall of the Schedule 'B' property. The assertion of the plaintiff is that the defendants have not left the set back and put up illegal construction in the Schedule 'B' property and tried to create a right of easement by illegally erecting the window on the western wall of the Schedule 'B' property. Whether the aforesaid assertion of the plaintiff is correct or not, is required to be ascertained by the Court Commissioner by physically inspecting the suit schedule properties by ascertaining whether the defendants have left the set back or not and whether they have erected windows and ventilators on the



western side of the wall of the Schedule 'B' property as asserted by the plaintiff.

8. The contention of the plaintiff with regard to the ownership of the Schedule 'B' property by the defendants is not disputed by the plaintiff. The dispute is only with regard to leaving set back by the defendants in Schedule 'B' property and erecting the window and ventilator in the western wall of the Schedule 'B' property and the said factual aspect is required to be ascertained by the Court Commissioner only on physical inspection and measurement of the properties. The Trial Court, considering the rival contentions and taking note of the relief sought in the plaint, has rightly allowed the application for appointment of the Court Commissioner. The same would not cause any prejudice to the defendants as the defendants have every right to object the Court Commissioner's report once it is placed before the Court. I am of the considered view that the report of the Court



Commissioner would aid the Trial Court in considering the *lis* between the parties.

9. For the aforementioned reasons, I do not find any merit in the contentions advanced by the petitioner calling for interference with the impugned order of the Trial Court.

10. The writ petition is devoid of merits and is accordingly dismissed.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 2 Sl No.: 1