



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 4TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO.100352 OF 2026 (GM-CPC)

BETWEEN:

RASULSAB S/O. ALISAB KARJAGI
SINCE DECEASED BY HIS LRS

1. SMT. SHAMEENBANU W/O. RASULSAB KARJAGI,
AGE. 54 YEARS, OCC. HOUSEHOLD WORK,
R/O. NEAR ABUBAKRA DARGA, MAIGUR ROAD,
TQ. JAMKHANDI, DIST. BAGALKOT-587119.
2. MOHAMMAD MUSTAFA S/O. RASULSAB KARJAGI,
AGE. 35 YEARS, OCC. BUSINESS,
R/O NEAR ABUBAKRA DARGA, MAIGUR ROAD,
TQ. JAMKHANDI, DIST. BAGALKOT-587119.
3. MOHAMMAD TANVIR S/O. RASULSAB KARJAGI,
AGE. 30 YEARS, OCC. BUSINESS,
R/O. NEAR ABUBAKRA DARGA, MAIGUR ROAD,
TQ. JAMKHANDI, DIST. BAGALKOT-587119.



...PETITIONERS

(BY SRI. GIRISH A.YADAWAD, ADVOCATE)

AND:

1. MOHAMMAD ALI S/O. BABU SAB MANIYAR,
AGE. 44 YEARS, OCC. TRADER,
R/O. KACHERI ROAD, JAMKHANDI,
TQ. JAMKHANDI, DIST. BAGALKOT-587301.



2. MOHAMMAD ALI S/O. RASULSAB KARJAGI,
AGE. 32 YEARS, OCC. BUSINESS,
R/O. NEAR ABUBAKRA DARGA, MAIGUR ROAD,
TQ. JAMKHANDI, DIST. BAGALKOT-587119.
3. SMT. TAYABA W/O. NOORAMMAD KHATIB,
AGE. 29 YEARS, OCC. HOUSEHOLD WORK,
R/O. NEAR ABUBAKRA DARGA, MAIGUR ROAD,
TQ. JAMKHANDI, DIST. BAGALKOT-587119.

...RESPONDENTS

(BY SRI. ANIL KALE, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF CONSTITUTION OF INDIA, PRAYING TO A) ISSUED A WRIT OF CERTIORARI TO QUASH THE IMPUGNED ORDER DATED 10.12.2025 PASSED BY THE ADDL. SENIOR CIVIL JUDGE, JAMKHANDI ON IA NO.6 IN OS NO.142/2021 VIDE ANNEXURE-E, AND ALLOW IA NO.6 FILED BY THE PETITIONERS, IN THE INTEREST OF JUSTICE AND EQUITY. B) PASS SUCH ORDER OR ORDERS WHICH THIS HON'BLE COURT DEEMS FIT AND NECESSARY UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE, IN THE INTEREST OF JUSTICE AND EQUITY.

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

CORAM: THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI



ORAL ORDER

Aggrieved by the order passed in I.A.No.6 in O.S.No.142/2021 dated 10.12.2025 by the Additional Senior Civil Judge, Jamkhandi, the petitioners who are defendant Nos.1A, 1B and 1D are before this Court.

2. The respondent No.1 herein had filed O.S.No.142/2021 seeking possession. In that, the defendant had filed I.A.No.VI under Order XXVI Rule 9 read with Section 151 of CPC to appoint the Assistant Director for Land Records as Court Commissioner for measurement of the suit property as per the memo of instructions. That application came to be dismissed by way of order impugned.

3. While dismissing I.A.No.VI, the trial Court had observed that the defendant has not produced any clinching document to demonstrate either ambiguity or confusion regarding the property in question. It is well settled law that the Court Commissioner cannot be appointed to collect evidence or to fill the lacuna in the defendant's case. The measurement of the suit schedule property as sought by the defendant in this case



amounts to collection of evidence. Further, there is no ambiguity either in the description of the suit schedule property or in the identity of the suit schedule property. Moreover, the defendant seriously disputed the PT sheet prepared and filed in O.S.No.70/2015 on which the plaintiff relied and claimed the possession of the suit schedule property.

4. The trial Court further observed that on perusal of the defendant's written statement and other materials, it does not reveal that the defendant has not at all challenged the PT sheet before the appropriate forum. That apart, the defendant clearly contended that O.S.No.70/2015 filed by the plaintiff was decreed in his favour and aggrieved by the same, the defendant preferred RA.No.10/2020. In the present facts, it appears that the measurement of suit schedule property sought by the defendant is neither required nor relevant for deciding the possession of the suit schedule property at this stage. Accordingly, the trial Court had dismissed the application.

5. Learned counsel appearing for the petitioners/defendant Nos.1A, 1B and 1D submits that in the earlier suit i.e., O.S.No.70/2015, a survey was conducted. It is submitted that



there are five properties in that. Further, the second suit is filed by the plaintiff. The property in this suit and the property in the other suit are not one and the same. The trial Court cannot take the survey that is conducted in the other suit pertaining to the other properties without a specific reference to this property which is the suit schedule property. It is submitted that they have filed the present application for the survey as the survey would reveal the true facts and whether there is any encroachment by the defendant or not.

6. Learned counsel appearing for respondent No.1/plaintiff submits that when a sketch was prepared in the earlier suit between the very same parties and that litigation has attained finality, the defendant has not questioned the same, as such, the trial Court had rightly held that the said aspect has attained finality and it amounts to collecting of the evidence and rightly dismissed the application. As such, no interference is called for with the order impugned.

7. Having heard the learned counsels on either side, perused the entire material on record. Earlier, respondent No.1 herein had filed a suit for possession in respect of five properties.



In the said suit, Court Commissioner was appointed and a report was placed before the trial Court. After that, the suit was decreed. It is an admitted fact that this property is not part of the earlier suit. Though it is between the same parties, when it is not the same property, the trial Court will not consider the said report filed in the earlier suit.

8. As far as the present application that is filed by the defendant is concerned, when the plaintiff says that there is an encroachment by the defendant and he files a suit for possession, it is for the plaintiff to prove that there is encroachment by the defendant and there is no necessity for the defendant to file such an application. In case if the trial Court considers the report that is given in the earlier suit, it is for the petitioner to raise his objection and once an order is passed by the trial Court, it is always open to the defendant to question the same. In that view of the matter, this Court do not find any reasons to interfere with the order impugned. Hence, this Court is passing the following:



ORDER

- i. Accordingly, this writ petition is ***dismissed***.
- ii. All I.As. in this petition shall stand closed.

Sd/-
JUSTICE LALITHA KANNEGANTI

MEG
CT: UMD
List No.: 1 SI No.: 23