



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

WRIT PETITION NO. 201375 OF 2026 (GM-CPC)

BETWEEN:

1. TUKARAM S/O DHONDIBA PADATARE,
AGE: 74 YRS, OCC: AGRI,
R/O HONAWAD, TQ. TIKOTA,
DIST. VIJAYAPURA.
2. SHANKAR S/O RAMU PADATARE,
AGE: 52 YRS, OCC: AGRI,
R/O HONAWAD, TQ. TIKOTA,
DIST. VIJAYAPURA.
3. BHAJIRAO S/O DEJIBA PADATARE,
AGE: 74 YRS, OCC: AGRI,
R/O HONAWAD, TQ. TIKOTA, DIST. VIJAYAPURA.

...PETITIONERS

(BY SRI SHIVANAND PATIL, ADVOCATE)

AND:

1. NEELABAI W/O SHIVAJI KALE,
AGE: 42 YRS, OCC: HH WORK
R/O HONAWAD, TQ. TIKOTA,
DIST. VIJAYAPURA-586101.
2. SUREKHA W/O AJITH PAWAR,
AGE: 29 YRS, OCC: HH WORK,
R/O KUPAVAN, TQ. AND DIST. SANGLI-500179.



3. MANTESH S/O SHIVAJI KALE
AGE: 18 YRS,
R/O KUPAVAN, TQ. AND DIST. SANGLI,
BY HIS NATURAL MOTHER
NEELABAI W/O SHIVAJI KALE,
R/O HONAWAD,
TQ. TIKOTA, DIST. VIJAYAPURA-586101.
4. SANTOSH S/O SHIVAJI KALE
AGE: 26 YRS, OCC: STUDENT,
R/O HONAWAD,
TQ. TIKOTA, DIST. VIJAYAPURA-586101.
5. POOJA W/O BHIMU HAVALDAR,
AGE: 29 YRS, OCC: HH WORK,
R/O ANANDAPUR, TQ. ATHANI,
DIST. BELGAVI-589001.
6. VITHAL S/O PUNDALIK KALE,
AGE: 39 YRS, OCC: AGRI,
R/O HONAWAD,
TQ. TIKOTA, DIST. VIJAYAPURA-586101.
7. SHRIMANT S/O PUNDALIK KALE,
AGE: 36 YRS, OCC: AGRI,
R/O HONAWAD,
TQ. TIKOTA, DIST. VIJAYAPURA-586101.

...RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A) A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER WRIT OR ORDER OF THE LIKE NATURE AND SET ASIDE THE IMPUGNED ORDER DATED 07.02.2026 ACCEPTING THE COURT COMMISSIONER REPORT IN OS NO.683/2012 PENDING ON THE FILE OF IV ADDL. CIVIL JUDGE VIJAYAPURA AS PER ANNEXURE-F; B) PASS ANY OTHER ORDER OR DIRECTION AS THE COURT DEEMS FIT IN THE CIRCUMSTANCE OF THE CASE.



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

CORAM: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

ORAL ORDER

Defendants are before this Court in this Writ Petition filed under Article 227 of the Constitution of India seeking for the following reliefs:

- "a) A writ in the nature of certiorari or any other writ or order of the like nature and set aside the impugned order dated 07.02.2026 accepting the Court Commissioner report in OS No.683/2012 pending on the file of IV Addl. Civil Judge Vijayapura as per Annexure-F;*
- b) Pass any other order or direction as the court deems fit in the circumstance of the case."*

2. Heard the learned counsel for the petitioners.

3. Respondents herein have filed O.S.No.683/2012 before the jurisdictional Civil Court at Vijayapura seeking the relief of permanent injunction. It appears that in the said suit an application was filed by the defendants under Order XXVI Rule 9 of CPC to appoint a Court Commissioner



for the purpose of holding a local inspection of the suit schedule property and submitting report. The Trial Court had appointed the ADLR, Vijayapur as Court Commissioner on 10.03.2020 who has submitted his report on 29.11.2024. Though acceptance of the said report was opposed by the defendants, the Trial Court on 07.02.2026 had accepted the said report and has posted the matter for arguments. Assailing the aforesaid order dated 07.02.2026, the defendants are before this Court.

4. Learned counsel for the petitioners, having reiterated the grounds urged in the petition, submits that the Trial Court has failed to take note of the objection raised by the defendants to the Commissioner's report. The Trial Court could not have accepted the report without granting an opportunity of cross-examining the Court Commissioner and therefore, the impugned order is bad in law.

5. Order XXVI Rule 10 of CPC reads as follows:



"10. Procedure of Commissioner-(1) *The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence together with his report in writing signed by him, to the Court.*

(2) Report and depositions to be evidence in suit.- *The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record, but the Court, or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.*

(3) Commissioner may be examined in person.- *Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit."*

6. A reading of sub-rule(2) of Rule 10 of Order XXVI of CPC would go to show that any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report or as to the manner in which he has made an investigation. Acceptance of the Commissioner's report by the Court will not preclude the party from filing necessary application seeking permission of the Trial Court to cross-examine the Commissioner, if



he is so advised. Under the circumstances, I do not find any good ground to entertain this writ petition.

7. At this stage, learned counsel for the petitioners submits that petitioners may be granted liberty to file necessary application before the Trial Court to cross-examine the Commissioner.

8. The said submission is placed on record.

9. The Writ Petition is ***disposed of*** with liberty as prayed for.

Sd/-
(S.VISHWAJITH SHETTY)
JUDGE

SWK
List No.: 1 Sl No.: 20
CT:PK