



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 25TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

WRIT PETITION NO. 201725 OF 2026 (GM-CPC)

BETWEEN:

MANJUNATH S/O SIDDAYYA KANTIMATH
AGE: 51 YEARS, OCC: AGRICULTURE
R/O VEKAT BENNUR, TQ. AND DIST. KALABURAGI
NOW R/O C/O SOMASHEKHAR HONGUNDI
OPP. SHOP N STOP M G ROAD,
M B NAGAR, TQ. AND DIST. KALABURAGI

...PETITIONER

(BY SRI. SANKET APPAJI, ADV FOR
SRI. HARSHAVARDHAN R MALIPATIL.,ADVOCATE)

AND:

1. VEERAYYA S/O LATE SIDDAYYA STHAWARMATH
AGE: 66 YEARS, OCC: RTD. EMPLOYEE
R/O VENKAT BENNRU
TQ. AND DIST. KALABURAGI-585107
2. PANCHAYAT DEVELOPMENT OFFICER
GRAM PANCHAYAT OFFICE,
BHOPAL TEGNOOR,
TQ. AND DIST. KALABURAGI-585107

...RESPONDENTS

(BY SRI. C.A. SUGOOR, ADV FOR C/R-1)





THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, A) ISSUE WRIT OF CERTIORARI QUASHING THE ORDER DATED 13.01.2026 ON IA NO.2 VIDE ANNEXURE-E, PASSED IN O.S.NO.11/2022 ON THE FILE OF I ADDL. CIVIL JUDGE AND JMFC AT KALABURAGI. B) ISSUE ANY OTHER WRIT OR ORDER FOR WHICH THE PETITIONER FOUND ENTITLED TO, BE AWARDED.

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

Defendant No.1 is before this Court under Articles 226 and 227 of the Constitution of India with a prayer to quash the order dated 13.01.2026 passed on I.A.No.II in OS No.11/2022 as per Annexure-E passed by I Addl. Civil Judge and JMFC, Kalaburagi.

2. Heard the learned counsel for the petitioner and the learned counsel for the caveator-respondent No.1.

3. Respondent No.1 has filed OS No.11/2022 before the jurisdictional Civil Court at Kalaburagi seeking the relief of permanent injunction, in respect of the suit schedule property and also the relief of mandatory



injunction, directing defendant No.2 to remove or demolish the construction put up by defendant No.1 over the suit schedule property. In the said suit, defendant No.1 has entered appearance and has filed a detailed written statement opposing suit. After the recording of evidence of both parties' was concluded before the Trial Court, I.A.No.II was filed on behalf of the plaintiff under Order XXVI Rule 9 read with Section 151 of CPC to appoint the ADLR as Court Commissioner for the purpose of local inspection of the suit schedule property and submit a report. The said application was opposed by the defendant No.1 by filing objections. The Trial Court, vide the impugned order has allowed the application. Aggrieved by the same, defendant No.1 is before this Court.

4. Learned counsel for the petitioner reiterating the grounds urged in the petition submits that suit is one for permanent injunction and therefore, the Trial Court could not have entertained the application for appointment of Court Commissioner, so as to enable to the plaintiff to



collect evidence. In support of his contention, he has placed reliance on the order passed by the Co-ordinate Bench of this Court in **WP No.1351/2020** disposed of on **22.08.2023**.

5. Per contra, learned counsel for caveator-respondent No.1, has argued in support of the impugned order.

6. Perusal of the material on record would go to show that OS No.11/2022 is filed seeking relief of permanent injunction, restraining the defendants from interfering with the peaceful possession of the suit schedule property by the plaintiff and also for mandatory injunction, directing respondent No.2 to demolish the construction put up by defendant No.1 by encroaching a portion of the property. It appears that during the course of cross examination, defendant No.1 has also stated that the Panchayat has constructed toilet in his property and plaintiff has encroached the property of the defendant No.1. Therefore, the plaintiff as well as the defendant No.1



have made allegations against each other about encroachment and construction of toilet illegally in the encroached property.

7. Order XXVI Rule 9 of CPC very clearly states that the discretion under the said provision of law is entirely on the trial Judge to appoint Court Commissioner to adjudicate the dispute between the parties. If the trial Judge is of the opinion that the oral and documentary evidence available on record are not sufficient to adjudicate the dispute between the parties, it is always open for him to exercise his powers under Order XXVI Rule 9 of CPC. In the case of ***Shadaksharappa v. Kumari Vijayalaxmi and Ors in WP No.201274/2022*** Co-ordinate Bench of this Court has held that whenever there are allegations of encroachment, in such suits, in normal circumstances, the Courts can appoint Court Commissioner and his report would assist the Courts for proper adjudication of the dispute between the parties. In the case of ***Sri S.C. Padmanarayana v. The Secretary,***



Barandur Grama Panchayath in **WP No.1351/2020**, suit was only for permanent injunction and there was no allegation of encroachment of the property and construction being put up on the same by the rival parties. It is under these circumstances, in the said writ petition, this Court held that appointment of Court Commissioner was not justified. Therefore, the said order cannot be applicable to the case on hand.

8. Under the circumstances, I am of the view that impugned order does not call for any interference and is accordingly, **dismissed**.

Sd/-
(S.VISHWAJITH SHETTY)
JUDGE

NJ
List No.: 1 Sl No.: 13