

(2026) 08 KAR CK 2235

In the Karnataka High Court, Bengaluru Bench

Case No : WRIT PETITION NO.1630/2020 (GM-CPC)

Sri. B. Rajanna

APPELLANT

Vs

Sri. K. Narayana & Ors.

RESPONDENT

Date of Decision : 05-08-2026

Acts Referred:

Constitution of India — Article 226, 227

Code of Civil Procedure, 1908 — Order XXVI Rule 10, Section 151

Citation : (2026) 08 KAR CK 2235

Hon'ble Judges : Vijaykumar A. Patil, J

Bench : Single Bench

Advocate : Sri. Akarsh Kumar Gowda, Sri. Anil Kumar A.S., Sri. Parameshwarappa C

Final Decision : Dismissed

Judgement

This petition is filed challenging the order dated 27.11.2019 in O.S.No.22/2012 by the Principal Civil Judge and JMFC, Srirangapatna (for short, '**the trial Court**').

2. Heard Sri.Akarsh Kumar Gowda, learned counsel appearing for the petitioner and Sri.Anil Kumar A.S., learned counsel for Sri.Parameshwarappa C., learned counsel appearing for the respondent Nos.2 and 3 and perused the material available on record.

3. The respondents-plaintiffs have filed the suit in O.S.No.22/2012 seeking the relief of declaration and possession. In the said suit, the petitioner-defendant has filed a detailed written statement. The issues were framed. The parties led the evidence. Thereafter, the plaintiff filed an application under Order XXVI Rule 10 read with Section 151 of the Code of Civil Procedure, 1908, (for short, '**the CPC**') seeking to appoint Court Commissioner to measure the suit schedule property to find out the encroachment by the defendant. The said application came to be allowed by the trial Court by recording the reasons that the plaintiffs have made a specific assertion with regard to the encroachment and the said fact is required

to be ascertained by local inspection only.

4. The primary contention of the learned counsel for the petitioner-defendant is that allowing an application for appointment of Court Commissioner would amount to collection of evidence in favour of one party which is impermissible. It is submitted that plaintiffs have failed to produce any evidence to establish that there is encroachment by the defendant. In the absence of any such material, there cannot be an order for appointment of the Court Commissioner and such exercise would amount to collection of evidence on behalf of the plaintiffs. In support of his contention, learned counsel for the petitioner-defendant has placed reliance on the decision of this Court in the case of **Sri.Gopalappa v. Sri.Changappa and others**¹. Hence, he seeks to allow the petition.

5. Per contra, learned counsel for the respondents-plaintiffs supports the order of the trial Court.

6. Having heard the learned counsel appearing for the parties, it is to be noticed that in the suit for declaration and injunction, the plaintiffs are making specific assertion that the defendant has encroached the property belonging to them which is shown as the suit schedule property and a Panchayath was held in the year 2007, wherein the defendant has agreed to pay some amount and agreed to get the sale deed executed. The further case of the plaintiffs is that as per Ex.P2, a sketch of the Taluka Surveyor, clearly depicts that there is an encroachment by the defendant. On these premises, the application for appointment of Court Commissioner is filed. In my considered view, trial Court is fully justified in allowing the said application.

7. It is required to be noticed that the plaintiffs are making a specific assertion that there is encroachment by the defendant over the suit schedule property and the said assertion is based on Ex.P2, a sketch which is placed before the trial Court, which has been denied by the defendant by contending that he is in possession of the property which is a Grama Thana land and not the suit schedule property.

8. When one party to the proceedings is making assertion that another party to the suit has encroached the property and the relief being one for declaration and possession, the said factual assertion of encroachment is required to be ascertained only by appointing a Court Commissioner for local inspection, as any number of oral and documentary evidence may not be sufficient to ascertain the said aspect.

9. Insofar as the contention with regard to collection of evidence is concerned, this Court in the case of **Sri Shadaksharappa vs. Kumari Vijayalaxmi and others** had considered all the aspects and held that the appointment of Court Commissioner is necessary to elucidate the disputed aspects and such exercise would not be a collection of evidence.

10. It is to be noticed that the report of the Court Commissioner would aid the

trial Court in deciding the dispute between the parties. Mere appointment of Court Commissioner and placing the report before the trial Court would not amount to decreeing the suit of the plaintiffs. It is always open for the defendant to oppose the said report of the Court Commissioner, if it is against his interest by filing objections and the defendant even has an opportunity to cross-examine the Court Commissioner.

11. With the aforesaid observations, I am of the view that the writ petition is devoid of merits, hence, the same is ***rejected***.

No order as to costs.

FOOTNOTES

1. WP No.25810/2018 DD.14.02.2024

2. ILR 2023 KAR 3983