

IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH

DATED THIS THE 20^{TH} DAY OF AUGUST, 2025 BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI WRIT PETITION NO.201740 OF 2025 (GM-CPC)

BETWEEN:

- SRI. SHIVANAGOUDA S/O KALLANAGOUDA @ KALLAPPA PATIL, AGED ABOUT 62 YEARS,
- SRI. KALLANAGOUDA
 S/O NINGANAGOUDA @ NINGOND PATIL,
 AGED ABOUT 36 YEARS,
- SRI. SHABAGOUDA
 S/O NINGANAGOUDA @ NINGOND PATIL,
 AGED ABOUT 33 YEARS,
- 4. SRI. NINGANAGOUDA

 @ NINGOND S/O KALLANGOUDA

 @ KALLAPPA PATIL,
 AGED ABOUT 69 YEARS,
 ALL ARE R/AT KAKHANDAKHI VILLAGE,
 BABALESWAR TALUK
 VIJAYAPURA DISTRICT 586109.

...PETITIONERS

(BY SRI.M. V. V. RAMANA., AND SRI.SANGANBASAVA B. PATIL., ADVOCATES)

AND:

1. SRI. BALASAHEB S/O SRI. RAMANAGOUDA PATIL,





AGED ABOUT 74 YEARS, R/O MALLIKARJUNA KRIPA, PLOT NO.83, VIVEK NAGAR (W), VIJAYAPURA-586109.

- SRI. RAMANGOUDA @ APPU S/O SRI BHIMARAYA @ SRI BHIMANAGOUDA PATIL, AGED ABOUT 42 YEARS,
- SMT. SUSHILA BAI
 W/O SRI BHIMARAYA
 @ SRI BHIMANAGOUDA PATIL,
 AGED ABOUT 70 YEARS,
- 4. SMT. VIJAYALAKSHMI
 W/O SRI SAHEBAGOUDA BHUSAGOND,
 AGED ABOUT 34 YEARS,
 RESPONDENTS 2 TO 4
 R/AT KAKHANDAKHI VILLAGE,
 BABALESWAR TALUK,
 VIJAYAPURA DISTRICT 586109.

...RESPONDENTS

(BY SRI. D. P. AMBEKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, SEEKING CERTAIN RELIEFS
THIS WRIT PETITION IS LISTED FOR ORDERS, THIS DAY,
AN ORDER IS MADE AS UNDER:

ORAL ORDER

Sri.M.V.V.Ramana., counsel on behalf of Sri.Sanganbasava B.Patil., for the petitioners has appeared through video conferencing.



Sri.Sanganbasava B.Patil., counsel for the petitioners and Sri.D.P.Ambekar., counsel for the respondents have appeared in person.

- 2. The order dated 04.04.2025 passed by the Court of Additional Sessions Judge, Fast Track Court-I at Vijayapura on I.A.Nos.1 and 2 in R.A.No.98/2022 vide Annexure-H is called into question in this Writ Petition on several grounds as setout in the Memorandum of Writ Petition.
- 3. Counsel for the respective parties urged several contentions.

Counsel Sri.M.V.V.Ramana., in presenting his arguments vehemently contends that the Commissioner did not take the measurement of the property in question, hence, the report is incomplete in most of the aspects. He argued by saying that the Commissioner's report has not been questioned, hence the plaintiffs can seek for appointment of the Commissioner once again. Lastly, he submits that viewed from any angle, the order of the Appellate Court in rejecting the application is untenable. Counsel, therefore, submits that the Writ Petition may be



allowed and I.A seeking appointment of Commissioner may be allowed.

Counsel for the respondents justified the order of the Appellate Court. He submits that the Writ Petition is devoid of merits and the same may be dismissed.

Heard the arguments and perused the Writ papers with care.

- 4. The point that requires consideration is whether the order passed by the Appellate Court requires interference.
- 5. Suffice it to note that a suit was filed seeking certain reliefs. Upon service of the summons, a written statement was filed. During the pendency of the suit, the plaintiffs filed an application under Order 26 Rule 9 of CPC for appointment of the Commissioner and the same was opposed by the defendants. The Trial Court appointed Commissioner. The Commissioner submitted a report. The objections were filed by the plaintiffs to the Commissioner's report. The Commissioner was also cross-examined by the plaintiffs. The Trial Court extenso referred to the material on



record and partly decreed the suit on 16.08.2022. Aggrieved by the Judgment and Decree of the Trial Court, the plaintiffs preferred an appeal in R.A.No.98/2022.

Surprisingly, in the appeal, the plaintiffs filed one more application for appointment of Commissioner contending that the Commissioner's report was incomplete, hence, sought appointment of an Advocate as a Commissioner. As already noted above, on a plaintiffs' request, the Trial Court had appointed ADLR as the Court Commissioner, report was submitted and the same was accepted by the Trial Court after giving opportunity to the plaintiffs. It appears that the plaintiffs were not satisfied with the Commissioner's report and they had been given an opportunity to cross-examine the Commissioner. The Trial Court had accepted the Commissioner's report. The Appellate Court is justified in observing that the findings of the Trial Court can be assailed by the plaintiffs in the Regular Appeal. In my view, the conclusion and the finding so arrived at by the Appellate Court are just and proper. The petitioners have not made out any grounds to interfere with the order of



the Appellate Court. The Writ Petition is devoid of merits and is liable to be rejected.

6. Resultantly, the Writ Petition is *rejected*.

Sd/-(JYOTI MULIMANI) JUDGE

MRP/VNR

List No.: 1 SI No.: 22