

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

ON THE 7th DAY OF SEPTEMBER 2012

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

WRIT PETITION NO.16733 OF 2012 (GM-CPC)

Between :

1. Syed Rahamathulla,
S/o. Late Syed Ameer,
Aged about 54 years,
Agriculturist
2. Smt. Noor Jahan,
W/o. Late Syed Ameer,
Aged about 70 years,
Agriculturist

Both are residing at:
Koodli Village,
Shimoga Taluk

... Petitioners

(By Sri. Varadaraj R. Havaladar, Adv.)

And :

Abdul Khuddus,
Dead by LRs:

- 1(a) Naveed,
S/o. Abdul Khuddus,
Aged about 40 years,
Agriculturist,
R/o : Koodli Village,

Shimoga Taluk

- 1(b) Smt. Jameela,
W/o. Ibrahim Sab,
D/o. Abdul Khuddus
Aged about 35 years,
Household,
R/o : Ambarakoppa
Shikaripura Taluk
- 1(c) Smt. Farida,
W/o. Ataulla Khan,
D/o. Abdul Khuddus
Aged Major,
Household,
R/o : Koodli,
Shimoga Taluk
- 1(d) Javeed,
S/o. Abdul Khuddus,
Aged about 30 years,
Agriculturist,
R/o : Koodli Village,
Shimoga Taluk
- 1(e) Sanaullah,
S/o. Abdul Khuddus,
Aged about 28 years,
Agriculturist,
R/o : Koodli Village,
Shimoga Taluk
- 1(f) Smt. Mehrunissa,
W/o. Aslam Pasha,
S/o. Abdul Khuddus,
Aged about 26 years,
R/o : Holehonnuru,

Bhadravati Taluk

1(g) Sagaira Ahamed,
S/o. Abdul Khuddus,
Aged about 22 years,
R/o : Koodli Village,
Shimoga Taluk ... Respondents

(By M/s.Purna Law Assts, Adv.
For R1 (A) – (G))

This Writ Petition is filed under Articles 226 & 227 of the Constitution Of India, praying to quash the Annexure – A being the impugned order dated 29.03.2012 passed by the Court of Prl. Civil Judge (Jr.Dn.) and JMFC, Shimoga in O.S. No.690/2008, including the calling of records of the trial court pertaining to the above suit and dismiss I.A. No.II filed by the respondents for the appointment of Court Commissioner with costs.

This writ petition coming on for Preliminary Hearing, the Court made the following:

ORDER

The respondent - plaintiff filed a suit for declaration. During the pendency of the suit, he filed an application under Order – 26, Rule 9, read with Section – 151 of C.P.C., seeking appointment of a Commissioner. The Trial Court by the impugned order

allowed the same. Hence, the present petition by the defendant.

2. The learned counsel for the petitioner contends that the impugned order is bad in law and liable to be set-aside. That the Trial Court misdirected itself in allowing the application, even before commencement of evidence. Hence, the application be rejected on that ground alone.

3. The learned counsel for the respondents defends the impugned order. He contends that the Trial Court was of the considered view that, it is appropriate to appoint a Commissioner, and hence he pleads that there is no error committed by the Trial Court that calls for interference.

4. On hearing the learned counsels and on examining the material on record and the impugned order, I am of the considered view that the Trial Court

committed an error in allowing the application to appoint a Commissioner, in a case where evidence is yet to commence. It is only after evidence is recorded and in such an event if evidence is recorded and on consideration of the same, if the Trial Court is of the view that appointment of the Commissioner is necessary and just, in order to assist the Court, it is only at that stage that a Commissioner may be appointed. The Trial Court to allow such an application at this stage of the suit is premature.

5. Under these circumstances, liberty is always available for the respondents to make such an application after closure of evidence, for an appointment of a Commissioner, if necessary, which the Trial Court shall necessarily consider on merits.

6. For the aforesaid reasons, the order 29.03.2012, passed by the Principal Civil Judge (Junior Division), and JMFC, Shimoga, is set-aside.

Ordered accordingly.

Sd/-
JUDGE

JJ*