



WP No. 100027 of 2022

**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

**DATED THIS THE 21<sup>ST</sup> DAY OF NOVEMBER, 2022**

**BEFORE**

**THE HON'BLE MR JUSTICE N.S.SANJAY GOWDA**

**WRIT PETITION NO. 100027 OF 2022 (GM-CPC)**

**BETWEEN:**

KRISHAN S/O. CHANABASAPPA SHERAKHANE  
AGE- 48 YEARS, OCC. AGRICULTURE,  
R/O. NEAR PRIMARY SCHOOL  
YADAWAD VILLAGE, TALUKA. MUDALAGI,  
DISTRICT. BELAGAVI-591312.

...PETITIONER

(BY SRI SRINIVAS B.NAIK, ADVOCATE)

**AND:**

1. SMT. HARSHA W/O. PRAKASH HOTAGI,  
AGE 34 YEARS, OCC. HOUSEWIFE AND  
AGRICULTURE, R/O. SHANTI NAGAR  
ARALWAD VILLAGE, TALUKA ALANAVAR-581103.
2. KIRAN S/O. MALLAPPA POL,  
AGE. 32 YEARS, OCC. AGRICULTURE,  
R/O. NEKAR NAGAR, OLD HUBBALLI,  
HUBBALLI, DISTRICT DHARWAD-580024.
3. UDAY S/O. MALLAPPA POL,  
AGE. 30 YEARS, OCC. AGRICULTURE,  
R/O. NEKAR NAGAR,  
OLD HUBBALLI, HUBBALLI,  
DISTRICT DHARWAD-580024.

...RESPONDENTS

(NOTICE TO RESPONDENT NOS.1 TO 3-SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 &  
227 OF THE CONSTITUTION OF INDIA, IS FILED PRAYING TO  
ISSUE A WRIT OF CERTIORARI AND QUASH THE IMPUGNED





WP No. 100027 of 2022

ORDER DATED 18.12.2021 PASSED ON I.A.NO. IN O.S.NO.285/2019 ON THE FILE OF PRINCIPAL SENIOR CIVIL JUDGE, GOKAK VIDE ANNEXURE-E.

THIS PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

An application to appoint an Advocate/Court Commissioner to record the evidence of the scribe has been rejected by the Trial Court on the ground that there was no evidence to come to the conclusion that the scribe was suffering from ill-health.

2. In my view, if the petitioner contends that his witness is unable to come to the Court, the Trial Court ought to have taken a lenient view in the matter. In fact in the impugned order, the Trial Court notices that the photos produced by the defendants substantiates that the witness is an aged person, but that would not be an adequate ground to appoint a Court Commissioner.

3. In my view since no prejudice would be caused to the plaintiffs by appointing an Advocate/Court Commissioner, the I.A. filed under Order XXVI Rule 9 of



WP No. 100027 of 2022

CPC for appointing an Advocate/Court Commissioner to record the evidence of the scribe is allowed.

4. The Trial Court is directed to appoint an appropriate Advocate practicing before it for recording the evidence of the scribe.

5. It is made clear that on the date fixed, the scribe would be examined and also cross-examined and no reust for adjournment shall be entertained.

Impugned order is quashed, accordingly, writ petition is allowed.

**SD  
JUDGE**

CKK