

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 24TH DAY OF AUGUST, 2021

BEFORE

THE HON'BLE MR.JUSTICE S.R. KRISHNA KUMAR

W.P. No. 101299/2016 (GM-CPC)

BETWEEN:

SHRI FRANCIS XAVIER,
S/O KAITHAN NAZRETH,
AGE: 61 YEARS, OCC.: PENSIONER,
R/O: AMBIKA NAGAR-581 363,
DIST: KARWAR, NOW RESIDING
AT 1590/26, GURUKUL COLONY,
LAXMI NAGAR, KHANAPUR-591 302,
DIST: BELAGAVI.

- PETITIONER

(BY SRI VENKATESH M. KHARVI, ADVOCATE)

AND:

SHRI ABDUL RAZAQ GORISAB TASHEWALE,
AGE: 65 YEARS, OCC.: AGR. & BUSINESS,
R/O GPC NO. 729, BEEDI-591,
TQ: KHANAPUR, DIST: BELAGAVI.

- RESPONDENT

(BY SRI DINESH M. KULKARNI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 14.01.2016 PASSED BY THE PRINCIPAL CIVIL JUDGE AND JMFC, KHANAPUR ON I.A.NO. 9 IN O.S.NO. 219/2011 PRODUCED AT ANNEXURE-E & ETC.

THIS WRIT PETITION COMING ON FOR ORDERS THIS DAY, THE COURT, MADE THE FOLLOWING:

ORDER

This writ petition is directed against the impugned order dated 14.01.2016 passed by the learned Principal Civil Judge and JMFC, Khanapur (for short 'trial Court') on I.A. NO. 9 in O.S. No. 219/2011 whereby the said application filed by the respondent/ defendant under Order XXVI Rule 9 CPC seeking appointment of Court Commissioner to conduct local inspection of the suit schedule property was allowed by the trial Court.

2. I have heard learned counsel for the petitioner and the respondent and perused the impugned order.

3. Though several contentions have been urged by both sides with regard to their respective right, title, interest and possession over the suit schedule property, having regard to the nature of the claim putforth by the parties to the suit and the issues in controversy involved between the parties, in the light of the decision of the apex Court in ***Rahul S. Shah Vs. Jitendra Kumar Gandhi and Others (AIR 2021***

SC 2161), I am of the considered opinion that the impugned order passed by the trial Court on I.A. No. 9 and directing appointment of Court Commissioner to conduct local inspection of the suit schedule property has not occasioned failure of justice warranting interference by this Court in the exercise of its jurisdiction under Article 227 of the Constitution of India as held in **Radhey Shyam and another Vs. Chhabi Nath & Others** reported in **(2015) 5 SCC 423**.

4. In the result, I pass the following order.

ORDER

- i) Writ Petition is disposed of confirming the impugned order dated 14.01.2016 passed by the learned Principal Civil Judge and JMFC, Khanapur on I.A. NO. 9 in O.S. No. 219/2011;
- ii) Liberty is reserved in favour of the petitioner as well as respondent to submit their respective memos of instructions to the Court Commissioner;

iii) Liberty is also reserved in favour of the petitioner and the respondent to file objection to Commissioner's report and examine/ cross examine him after submission of the said report;

Subject to the aforesaid observations and directions, writ petition stands disposed of.

SD
JUDGE

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