

IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 9<sup>TH</sup> DAY OF NOVEMBER, 2011

B E F O R E

THE HON'BLE MR. JUSTICE A.N. VENUGOPALA GOWDA

WRIT PETITION NO.64656/2009(GM-CPC)

BETWEEN:

1. Sri. K.N.M.Srikantiahswamy  
S/o N.M.Basaiah,  
Age: 65 years,  
Occ: Retired K.E.B employee,  
R/o Dipali Nivas, 2<sup>nd</sup> Link Road,  
Parvati Nagar,  
Bellary.
2. Sri.N.M.Sadanadaswamy  
S/o Sadaksharaiahswamy,  
Age: 45 years,  
Occ: --  
R/o Kurugodu village,  
Tq/Dist: Bellary.
3. Sri. N.M.Mahantiahswamy  
S/o K.N.M.Sadaksharaiahswamy,  
Age: 40 years, Occ:--  
R/o Neelamma Mata,  
Kurugodu village,  
Tq/Dist: Bellary.

...PETITIONERS

(By Sri Arun L. Neelopant, Adv.)

AND:

Sri. K.G.Bhagyalakshmi  
S/o K.G.Narayanshetty,  
Age: 60 years, Occ: House wife,  
R/o Kurugdu village,  
Tq/Dist: Bellary.

:RESPONDENT

(By Sri Y. Lakshmikant Reddy, Adv.)

This petition is filed under Articles 226 & 227 of the constitution of India praying to call for records pertaining to the case O.S.No.446/2009 from the Court of II Additional Civil Judge (Jr.Dn.) at Bellary and set aside the order dated 27/7/2009 passed on I.A. filed u/o 26 Rule 9 of CPC in O.S.No.446/2009 as per Ann-E etc.

This petition coming on for orders this day, this Court made the following:

### **ORDER**

Respondent / plaintiff, filed O.S.446/2009 in the Court of Civil Judge at Bellary against the petitioners / defendants, to pass a decree of perpetual injunction from interfering with the construction work including laying underground drainage pipe for the purpose of connecting main drainage pipe. Petitioners who are the defendants in the suit, filed written statement and opposed the claim of the plaintiff.

2. Before the trial of the suit could commence, the plaintiff filed I.A.5 to appoint a Court Commissioner



and conduct local inspection and to submit the report. Though the application was opposed, Trial Court finding merit in I.A.5, allowed the application and appointed the Tahsildar, Bellary as Court Commissioner to conduct spot inspection and submit report. Questioning the said order, defendants have filed this writ petition.

3. Learned counsel appearing for the petitioners by relying upon the ratio of the decision in the case of *Miss Renuka Vs. Tammanna and Others*, reported in *ILR 2007 KAR 3029*, contended that I.A.5 ought to have been dismissed as premature since the said application was filed before the commencement of the trial of the suit.

4. Learned counsel appearing for the respondent on the other hand, made submissions in support of the findings and conclusion of the learned Trial Judge in the impugned order.

5. I have perused the record.

6. Indisputably, the trial of the suit has not commenced. It has been held in catena of decisions that,



6. Indisputably, the trial of the suit has not commenced. It has been held in catena of decisions that, ordinarily, the need for appointment of a Court Commissioner to conduct local inspection and to submit report would arise after the parties have adduced evidence. In the case of *Miss Renuka* (supra), it has been held as follows:

“ 7. It is settled position of law that Court Commissioner cannot be appointed to collect evidence in support of a claim. After completion of evidence on both the sides, if it is found that there is any ambiguity in the evidence adduced by the parties, then the Court may appoint a Commissioner for the purpose of clarification of such an ambiguity. In the instant case the evidence is not yet commenced and therefore the question of ambiguity in the evidence will not arise at this stage. The Trial Court without considering the settled position of law committed an error in passing the impugned order appointing a Court Commissioner. On this ground the impugned order is liable to be quashed.”

7. Since the impugned order is against the settled position of law in that the Court Commissioner has been



appointed prior to the parties adducing evidence, there being no urgency to appoint a Commissioner to conduct local inspection at this stage of the suit, the same is unsustainable.

In the result, the writ petition is allowed and the impugned order is quashed.

However, liberty is reserved to the respondent / plaintiff, to seek appointment of a Court Commissioner after the trial of the suit is complete, in case there is a need for appointment of a Court Commissioner to conduct local inspection and submit report for the purpose of clarification of ambiguity in the evidence, if any of the case of the parties.

No costs.

Sd/-  
JUDGE

sac\*