IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 21ST DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 200551 OF 2024 (GM-CPC)

C/W

WRIT PETITION NO. 200608 OF 2024 (GM-CPC)

IN W.P. NO.200551/2024:

BETWEEN:

1. SRI HAMPANAGOUDA
   S/O LATE SHARANAPPA,
   AGED ABOUT 66 YEARS,
   OCC: AGRICULTURE,
   R/O H.NO.1-3-297/3, R.R. COLONY,
   ASHAPUR ROAD, RAICHUR – 584101.

2. SRI BASAVARAJ
   S/O LATE SHARANAPPA,
   AGED ABOUT 61 YEARS,
   OCC: AGRICULTURE,
   R/O H.NO.1-3-297/3, R.R. COLONY,
   ASHAPUR ROAD, RAICHUR – 584101.

Digitally signed by RAMESH MATHAPATI
Location: HIGH COURT OF KARNATAKA

3. SRI MALLANAGOUDA
   S/O LATE SHARANAPPA,
   AGED ABOUT 66 YEARS,
   OCC: AGRICULTURE,
   R/O H.NO.1-3-297/3,
   R.R. COLONY, ASHAPUR ROAD,
   RAICHUR – 584101.

…PETITIONERS

(BY SRI BASAWARAJ KAREDDY, ADVOCATE)

AND:

SMT. K SAROJA W/O K. MUNISWAMY,
AGED ABOUT 49 YEARS,
OCC: HOUSEHOLD AFFAIRS,
R/O H.NO.1-3-297/3, R.R. COLONY,
ASHAPUR ROAD, RAICHUR – 584101.

…RESPONDENT

(BY SRI SACHIN M. MAHAJAN, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING THE ORDER OF THE LEARNED ADDITIONAL SENIOR CIVIL JUDGE AND JMFC-1, RAICHUR, DATED 18.01.2024 ON I.A NO.13 IN O.S NO. 141/2013, VIDE ANNEXURE-F AND CONSEQUENTLY ALLOW THE I.A NO.13.

IN W.P. NO.200608/2024:

BETWEEN:

SMT. SHIVADEVI @ SHIVAMMA
W/O LATE SAHEBGOUDA BIRADAR
AGE: 69 YEARS, OCC: NIL,
R/O MIG 32, NIGAJALINGAPPA NAGAR,
RAICHUR – 584101.

…PETITIONER

(BY SRI BASAWARAJ KAREDDY, ADVOCATE)

AND:

SMT. K. SAROJA W/O K. MUNISWAMY
AGED ABOUT 49 YEARS, OCC: HOUSEHOLD AFFAIRS,
R/O H.NO.1-3-297/3, R.R. COLONY,
ASHAPUR ROAD, RAICHUR – 584101.

…RESPONDENT

(BY SRI SACHIN M. MAHAJAN, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING THE ORDER OF THE LEARNED ADDITIONAL SENIOR CIVIL JUDGE AND JMFC-1, RAICHUR, DATED 18.01.2024 ON IA NO.13, IN OS NO.194/2014, VIDE ANNEXURE – F AND CONSEQUENTLY ALLOW THE I.A.NO.13.

THESE PETITIONS, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

(PER: HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL)

Writ Petition No.200551/2024 is filed by the petitioners seeking prayer to quash the order dated 18.01.2024 passed in O.S. No.141/2013 on IA.No.13 by the Additional Senior Civil Judge and JMFC-I, Raichur.

2. Writ Petition No.200608/2024 is filed by the petitioners seeking prayer to quash the order dated 18.01.2024 passed in O.S. No.192/2014 on IA.No.13 by the Additional Senior Civil Judge and JMFC-I, Raichur.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondent in both the petitions.

4. Learned Counsel for the petitioners submits that the petitioners have filed O.S.No.141/2013 and O.S.No.192/2014 seeking prayer for declaring that the plaintiffs/petitioners are the absolute owners and in possession of the suit plots along with an additional prayer seeking mandatory injunction against the respondent by dismantling the illegal construction of the compound wall put up in the suit property by the respondent and it is also prayed for delivery of vacant possession of the suit scheduled plots to the petitioners by dispossessing the defendant/respondent. It is submitted that the respondent has contested the suit by filing a detailed written statement. The petitioners in the said suit have filed an application for appointment of Court Commissioner before the trial Court and the trial Court allowed the said application by appointing the Commissioner, Raichur,

Urban Development Authority, as the Court Commissioner. The said Commissioner has submitted a report without complying with the mandate of the instructions given by the trial Court. It is submitted that the Court Commissioner has submitted a report stating that the plots in question found in the layout plan approved by the Town Planning Member do not have any plot numbers, hence he is unable to find out the encroached portion as directed. It is further submitted that the petitioners have cross-examined the Court Commissioner. In the meantime, the trial Court has posted the matter for final arguments. It is also submitted that the petitioners have filed an application seeking to recall the order dated 24.06.2023 and sought further prayer to re-issue the Commissioner Warrant to the same Commissioner to ascertain the extent of the encroachment of the suit property. Ultimately, the Commissioner is required to find out the encroached portion based on the admitted pleadings of the parties, as both the parties do not dispute that they are the owners of the plots bearing number 134,

135, 126 and 127 respectively. The pleadings on record also indicates that on the Western side of plot number 134 and 135 their exists a 80 feet road. It is also contended that when the parties to the proceedings do not dispute the existence of the respective plots, the Commissioner ought to have measured the site seeking clarification from the parties to the proceedings and submitted the report to trial Court with regard to the encroachment and without doing so the Commissioner has submitted an incomplete report, which has defeated the very object of appointment of a Court Commissioner. It is also contended that the suits cannot be effectively disposed of until the actual encroachment made by the respondent are found in the said suits and hence it is very much necessary to set aside the impugned orders by directing the said Commissioner to submit a report based on further instructions. Hence he seeks to allow the writ petitions by allowing the application filed by the plaintiffs/petitioners.

5. Per Contra, learned counsel for the respondent supports the impugned orders and submits that the trial Court has not closed its doors to the petitioners. It has held that the applications in IA No.VII would be considered along with the main suits. It is further submitted that the filing of the present application by the petitioners is an abuse of process of law as they want a tailor made report in their favour and if the report goes against them, they seek for re-issuance of Commissioner warrant for fresh instructions. Hence he seeks to dismiss the writ petitions.

6. I have heard the arguments of the learned counsel for the petitioners, learned counsel for the respondent and perused the material available on record.

7. The petitioners have filed the suits for declaration that the petitioners are the absolute owners of plot numbers 134 and 135 situated at Basaveshwara Housing Co-operative Society Limited, Lingasugur Road, Raichur. They have also sought further prayer seeking mandatory injunction against the respondent by

demolishing the compound wall illegally constructed by the respondent in the said suit schedule property and also to vacate and deliver the suit property to the petitioners.

8. The material available on record indicates that the plaintiffs have made a specific assertion that the defendant/respondent has encroached upon their site by putting up the construction, which has been denied by the defendant/respondent in the written statement. Admittedly the Court Commissioner was appointed by the trial Court to find out the extent of encroachment, if any, as alleged by the plaintiffs in their respective suits. The Court Commissioner has submitted the report. The said report does not indicate as to whether there is any encroachment or not. The said report only indicates that the Commissioner is unable to find out the encroachment and the reason assigned by the Commissioner is that the plot numbers are not found in the approved layout plan issued by the Town Planning Director.

9. In my considered view, the report of the Commissioner is perverse for the simple reason that the Commissioner ought to have visited the site in the presence of the plaintiffs and the defendant and based on the pleadings, he ought to have requested the plaintiffs and defendant to show the suit scheduled plots and based on the same he would have measured the total extent of 4 plots in dispute by considering the Western side road as a starting point and should have given the report indicating as to whether there is any encroachment of the plaintiffs plots by the defendant or not. Ultimately, the Court Commissioner is required to find out the portion of encroachment, if any, as claimed by the plaintiffs. Hence, in my considered view, the trial Court has committed a grave error in deferring the consideration of the application by the petitioners. The trial Court is directed to re-issue the Commissioner Warrant with specific instructions to find out whether there is any encroachment, and the extent of encroachment of suit plots, if any, as claimed by the plaintiffs in the suits.

10. For the aforementioned reasons, I proceed to pass the following;

ORDER

(a) The Writ Petitions are allowed.

(b) The impugned orders dated 18.01.2024 passed in O.S. No.141/2013 and O.S.No.192/2014 on IA.No.13 by the Additional Senior Civil Judge and JMFC-I, Raichur, are set aside.

(c) The trial Court is directed to re-issue the Commissioner Warrant to the same Commissioner with a fresh memo of instructions. The Commissioner shall submit the report to the trial Court in accordance with law. After receipt of the report, the trial Court shall proceed further in the matter in accordance with law.

(d) No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

MSR
List No.: 1 Sl No.: 19
CT: PS