



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 21<sup>ST</sup> DAY OF OCTOBER, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE R. NATARAJ**

**WRIT PETITION NO. 26894 OF 2024 (GM-CPC)**

**BETWEEN:**

SRI. RAJA YOGI NIRMALNATHJI MAHARAJ  
AGED ABOUT 48 YEARS  
MATADISHA OF KADRI YOGISHWAR MUTT  
KADRI, MANGALURU TALUK  
D K DISTRICT-575 002.

...PETITIONER

(BY SRI. RAJASHEKAR S.,ADVOCATE)

**AND:**

1. KADRI JOGI (YOGISHWAR) MUTT  
JEENODDAHARA AND KARYA  
NIRVAHANA SAMITHI  
JOGI MUTT, KADRI,  
MANGALURU-575 002.

REP.BY ITS PRESIDENT  
MR.HARINATH M. JOGI  
S/O HARISHCHANDRA JOGI  
AGED ABOUT 73 YEARS  
R/AT KAMBLA HOUSE  
KAVOOR POST, MARAKADA  
MANGALURU-575 015.  
(REG. RELIGIOUS ENDOWMENT AND CHARITABLE  
ACT)

2. D.K. DISTRICT JOGI SAMAJ  
SUDHARAKA SANGHA(REGD)





KADRI JOGI MUTT, KADRI,  
MANGALURU-575 002.

REP.BY ITS PRESIDENT  
MR.K ASHOK  
S/O LATE K.T. SHESHAPPA  
MAJOR IN AGE  
R/AT DOOR NO.2-2/13  
GORAKSHA DHARMA  
AMRUTH NAGAR, 1<sup>ST</sup> CROSS  
VAMANJOOR, MANGALURU  
D. K. DISTRICT-575 028.  
REG. UNDER KARNATAKA SOCIETY ACT

3. AKHILA BHARATHA VARSHIYA  
AVADOOOTH BHESH BARAH PANTH  
YOGI MAHA SABHA, HARIDWAR,  
UTTARA KHAND-249 401.

...RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 03.09.2024 PASSED ON I.A. NO.XVII IN O.S. NO.1652/2015 ON THE FILE OF THE III ADDITIONAL CIVIL JUDGE AND JMFC, MANGALURU DISMISSING THE I.A. NO.XVII FILED BY THE PETITIONER HEREIN UNDER ORDER XXVI RULE 1 READ WITH SECTION 151 OF CPC. VIDE ANNEXURE-A.

THIS PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY ORDER WAS MADE THEREIN AS UNDER:  
CORAM: HON'BLE MR JUSTICE R. NATARAJ

**ORAL ORDER**

The defendant No.1 in O.S.No.1652/2015 pending on the file of the III Additional Civil Judge and JMFC, Mangaluru (henceforth referred to as 'Trial Court') has filed this writ



petition challenging an order dated 03.09.2024 by which, his application under Order XXVI Rule 1 read with Section 151 of CPC to appoint a Commissioner to record evidence was rejected.

2. The suit in O.S.No.1652/2015 was filed for declaration that Kadri Shri Jogi Mutt (Yogishwara Mutt), Mangaluru belongs to Jogi community. The defendant No.1 contested the suit and claimed that the plaintiff had malversed the mutt and had attempted to convert Shaiva temple into a Viashnava temple. The defendant No.1 urged several contentions denying the claim of the plaintiffs.

3. Based on these contentions, the Trial Court framed the issues and set down the case for trial. The evidence of the plaintiffs was recorded.

4. When the case was set down for evidence of the defendants, the defendant No.1 filed an application under Order XXVI Rule 1 read with Section 151 of CPC to appoint a Commissioner to record the evidence. This application was based on the ground that the defendant No.1 is a Matadhipathi of Kadri Shri Jogi Mutt (Yogishwara Mutt) and that he has to



perform daily rituals in the mutt and therefore, is unable to attend the Court to lead evidence. He also contended that his ill-health was not permitting him to attend the Court.

5. The application was opposed by the plaintiff contending that the defendant No.1 was trying to prolong the case and no documents were produced to establish that he was suffering from any ill-health.

6. The Trial Court after considering contentions urged, rejected the application in terms of the impugned order on the ground that the doors of the Court are open from 11.00 a.m. to 5.45 p.m. and the defendant No.1 can attend the Court after completing his daily rituals in the mutt. It also held that the defendant No.1 did not produce any material to establish that he is suffering from any ill-health which does not permit him to attend the Court proceedings.

7. Being aggrieved by the said order, the defendant No.1 is before this Court.

8. The learned counsel for the defendant No.1 reiterated the above contentions and contended that the defendant No.1 has to perform the religious activities in the



mutt and therefore, it is difficult for him to attend the Court proceedings.

9. The cause-title of the writ petition discloses that the defendant No.1 is 48 years old man. Except claiming that he has to perform religious activities in the mutt and that he is suffering from ill-health, he has not cited any reason for not attending the proceeding before the Court. The reasoning of the Trial Court that the defendant No.1 can approach the Court during working hours after he completes his daily religious activities in the mutt is just and proper.

10. Therefore, this writ petition lacks merit and is ***dismissed***.

11. The Trial Court is directed to record the evidence of the defendant No.1 if not on 22.10.2024 which is the scheduled date of hearing or on the next date of hearing without fail.

**Sd/-  
(R. NATARAJ)  
JUDGE**

PMR