



CNR: KAHC010339842022

NC: 2026:KHC:47911
W.P. No.15209/2022

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 3RD DAY OF SEPTEMBER, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.15209/2022 (GM-CPC)

BETWEEN:

SRI. H.M. MANU
S/O SRI. MADEGOWDA
AGED ABOUT 38 YEARS
R/AT. HODIKE HOSAHALLI
KASABA HOBLI
CHANNAPATTANA TALUK
RAMANAGARA DISTRICT.

...PETITIONER

(BY SRI. GURU PRASANNA .S
SMT. PRIYANKA S. ANGADI &
SMT. RACHANA R, ADVS.,)

AND:

1. SRI. MARIGOWDA
S/O CHIKKEGOWDA
AGED ABOUT 67 YEARS
R/AT H. BASAVAPURA VILLAGE
HALAGURU HOBLI, MALAVALLI TALUK
MANDYA DISTRICT-571430.
2. SMT. CHIKKATHAYAMMA
W/O SRI. MARIGOWDA
AGED ABOUT 60 YEARS
R/AT H. BASAVAPURA VILLAGE
HALAGURU HOBLI
MALAVALI TALUK
MANDYA DISTRICT-571430.

...RESPONDENTS





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(BY SRI. CHIRANTH S.H. ADV., FOR
SRI. YESHU BABA MISHRA, ADV., FOR R1 & R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE IMPUGNED PROCEEDINGS DTD.18.7.2022 RECORDED BY THE I ADDL. CIVIL JUDGE MALAVALLI ANNEXURE-A IN O.S.NO.290/2020. QUASH THE NOTES OF INSPECTION DTD.18.7.2022 RECORDED BY THE I ADDL. CIVIL JUDGE MALAVALLI ANNEXURE-B IN O.S.NO.290/2020 & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 01.09.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV ORDER

This writ petition is filed challenging the impugned proceedings dated 18.07.2022 recording the memorandum of facts in O.S.No.290/2022 by the I Additional Civil Judge and JMFC, Malavalli (for short, 'the Trial Court').

2. Sri.Guru Prasanna S., learned counsel appearing for Smt.Priyanka S.Angadi and Smt.Rachana R., learned counsels for the petitioner submits that the petitioner filed a suit for permanent injunction against the respondents. In the said suit, the learned Presiding Officer visited the suit schedule property and recorded the



memorandum of facts which is impermissible before recording the evidence in the matter. It is submitted that though the power to visit the property is available to the learned Presiding Officer but the same cannot be done at the initial stage of the proceedings that too when an application for temporary injunction was pending. It is further submitted that later the Trial Court heard the application for temporary injunction filed by the petitioner-plaintiff and rejected the same. Though there is no reference of the memorandum of facts impugned in the present petition wherein it is recorded that the petitioner is not in possession of the property, it would have definitely weighed the mind of the Court while rejecting the application for temporary injunction. Hence, he seeks to allow the petition.

3. *Per contra*, Sri.Chiranth S.H., learned counsel appearing for Sri.Yesu Baba Mishra, learned counsel for the respondents supports the impugned memorandum of



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facts recorded by the learned Presiding Officer and submits that the writ petition is premature. The learned Presiding Officer has visited the spot, noticed certain facts and recorded the same in the form of memorandum of facts. Unless the same is used in passing an order, there cannot be any writ petition challenging such recording of observation. Hence, he seeks to dismiss the petition.

4. I have heard the arguments of the learned counsel for the petitioner, learned counsel for the respondents and meticulously perused the material available on record.

5. The correctness of recording of facts by the learned Presiding Officer on 18.07.2022 in the suit filed by the petitioner for the relief of permanent injunction is called in question in the present petition. Therefore, it would be useful to refer to the Order XVIII Rule 18 of Code of Civil Procedure, 1908 (for short, the CPC).



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Order XVIII Rule 18 of CPC reads as under:

"ORDER XVIII

Hearing of the suit and examination of witnesses

18. Power of Court to inspect.— *The Court may at any stage of a suit inspect any property or thing concerning which any question may arise [and where the Court inspects any property or thing it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit]."*

6. The Hon'ble Supreme Court and the High Courts have considered the scope and object of Order XVIII Rule 18 of the CPC in the following decisions:

(1) In the case of **UGAMSINGH AND MISHRIMAL Vs. KESRIMAL AND OTHERS¹**, the Hon'ble Supreme Court, at paragraph 17 has held as under:

"17. *One other objection which the learned Advocate for the appellants urged at the outset is*

¹ AIR 1971 SC 2540



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that the findings of the trial Judge are vitiated because he did not rely on the evidence on record but decided to which sect the idol in dispute belongs, only on what he found on his inspection of the idol and the Temple which cannot be evidence in the case, without his being subjected to cross-examination. It is further contended that even if what has been stated in the judgment is what the trial Judge had observed in his inspection there is nothing to show that he had drawn up inspection notes and made them part of the record as required under the law. The contention that the trial Judge had given his findings mainly on the observations made during his inspection in the first place is based on insufficient appreciation of what was really observed when dealing with the question as to which sect the idol in dispute belongs. It was observed in the judgment that most of the witnesses produced were non-Jains and therefore, their evidence does not carry much weight to establish to which sect the idol belongs. After stating that the remaining witnesses of the parties have given statements in favour of their party the trial Judge said that these statements also cannot be much relied upon. The decision of this case is based mostly on the site inspection and the evidence on record. Even while giving the



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findings the trial Judge remarked that the evidence led by the plaintiffs appears to be correct. These observations themselves show that the evidence on record was an element in the formulation of the trial court's judgment buttressed by the observations of the learned Judge during the site inspection. . There is therefore, no validity in the contention that the finding of the trial Judge was based entirely on the result of his inspection. It is also evident from a narrative given in the judgment of what was noticed during the inspection that the Judge had inspected the site on two occasions once on 24-3-1956 and again a year and two months thereafter on 23-5-1957. The details given by him could not have been given if he had not made some inspection notes. It would also appear that at the time of the inspection counsel for the plaintiffs and defendants were present because when giving a description of the idol of Neminathji in the Swetambari Jain Temple when it was noticed that some portion of the idol under the waist and naval is raised and is like a line, the Counsel for the plaintiffs pointed out to him that mark denoted the wearing of a loin cloth while the Counsel for the defendants said it was the mark of an artist. Again in respect of the observation that on the back-side and at the lower



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portion of the naval some portion is raised, the Counsel for the plaintiffs had pointed out to be loin cloth, while the Counsel for the defendants said that it has been engraved by an artist without any sense. We are satisfied that the description given by the learned Judge of the idols in the Adeshwarji Temple and the Temple of the Swetambaries were observations made during an inspection at which both the plaintiffs' and defendants' Advocates were present and that there must have been notes also in respect of the inspection made on both the occasions. The appellants had at no time made a grievance either to the District Judge or to the High Court or even before this Court except during the stage of arguments that there' were no inspection notes nor that the inspection was made by the Judge behind the back of the parties. If these objections had been raised earlier the respondents would have an opportunity of showing that there were inspection notes. The judgment in our view is not based solely on the result of personal inspection made by the trial Judge, which inspection was for the purposes of understanding the evidence in the case and has been so used by the trial Judge. We must therefore, reject the contention of the learned Advocate for the appellants that the finding in respect of the idol is



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vitiated. In this view it is not necessary to deal with any of the decisions referred to before us."

(2) In the case of **B.T.KRISHNAPPA Vs. PRINCIPAL MUNSIFF, KOLAR AND OTHERS²**, this Court, at paragraph 3, has held as under:

"3. I have not been able to comprehend how the provisions of Order 18, Rule 18, are opposed to Article 14 of the Constitution. Inspection is made by the Court in the presence of the parties and the relevant factss observed in the presence of the parties during the course of inspection will be recorded. That being so, there is no reason whatsoever to think that the Court will be exercising an absolute power. It is nothing but recording the factss as found during the course of inspection. This provision is intended to advance the cause of justice and to avoid unnecessary evidence being adduced in the case. Further, the record made of the factss observed during the course of observation enables the Court to give its verdict in conformity with the real nature of things. Thus the inspection by the Court in cases which are required to be decided with reference to certain things alleged to exist will greatly help the

² AIR 1980 KAR 106



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Court to arrive at a correct decision. If the Court acts arbitrarily during the course of inspection, it is always open for correction either in the appeal preferred against the decree passed in the suit or in revision in deserving cases."

(3) In the case of **SHREE SHREE VISHWOTHAMA THEERTHA SWAMIGAL Vs. SRI.H.BALARAJ³**, this Court, at paragraphs 8 and 9 has held as under:

"8. Thus, it is clear that the judgment of the Court should not be based solely on the observation made by the Court on local inspection. The inspection by the Court can only be for the purpose of understanding the evidence given by the witnesses. In other words, the observation of the Judge at the time of inspection can be used only for the purpose of better following and understanding the evidence adduced in the case or to test its accuracy. Therefore, there is no merit in the contention of the petitioner that the local inspection is made for collection of evidence in favour of the respondent.

9. As noticed above, the suit was for bare injunction on the ground that the

³ ILR 2007 KAR 3856



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petitioner/plaintiff is in possession of the entire 8 acres 24 guntas of land. The specific contention of the respondent/defendant is that he has been in possession of 2 acres of land out of 8 acres 24 guntas of the suit schedule property. It is his further case that the said 2 acres of land consists of his house, well, standing trees, etc., and that he has fenced the said 2 acres of land. Therefore, he made an application under Order 18 Rule 18 of the Code of Civil Procedure for inspection of the suit schedule property by the Court. The lower appellate Court on a proper consideration of the facts and circumstances of the case, has allowed the application. It is also clear from the order in MSA No. 109/2003 that this Court has directed the lower appellate Court to consider the case on merits in accordance with law. Therefore, it cannot be said that the impugned order is contrary to the decision of this Court."

(4) In the case of **SHRIKANT Vs. SUBHAS, SINCE DECEASED BY HIS LRs.⁴**, this Court, at paragraphs 14 and 15 has held as under:

⁴ ILR 2016 KAR 297



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*"14. By a plain reading of Order XVIII Rule 18 of the CPC, makes it clear that '**the Court may**' at any stage of the suit inspect any property or thing concerning which any question may arise and record the relevant facts observed on such inspection and such memorandum shall be part of the record of the suit. The said provision goes to show that the power has been vested in the Court to make inspection, if it deems fit. The said power can be exercised by the Court suo motu or even at the request made by the parties to Us. The language does not suggest that parties can claim spot inspection by the Court as a matter of right. The Court is not bound under Order XVIII Rule 18 C.P.C. to make a local inspection even if both the parties request for the same, if it considers that such an inspection is not necessary. On the other hand, an inspection can be made by the Court even if neither of the parties request, if it thinks necessary to do so in the interest of justice. The provision has not been enacted in order to test the veracity or the correctness of the evidence adduced in the case or believing some witnesses as against others, when the two sets speak about state of facts in a contradictory fashion.*



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15. *The use of words "at any stage of a suit" in Order XVIII Rule 18 C.P.C. further goes to show that the local inspection can be made at any stage, namely, before the evidence has begun to be recorded or in the course of recording of the evidence or after the evidence is concluded and before the argument are heard and judgment is delivered. It is obvious that there must be some purpose for the Courts making such inspections, but by no stretch of imagination, the provisions can be said to have been enacted by the legislature for appreciating or believing the statement of a witness as against others."*

(5) In the case of **SANNAGOUNDARA SIDDAPPA Vs. MAHADEVAPPA AND ANOTHER⁵**, this Court, at paragraphs 4 and 5 has held as under:

"4. *But the learned advocate for the defendant, who is the appellant before this court, urges that the decision of the trial Court was vitiated by the facts that it was based mainly on the learned Munsiff's own observations during the local inspection and not on the evidence in the case and that further that the learned Munsiff made no*

⁵ AIR 1964 MYS 214



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notes of inspection at all, which circumstance rendered the judgment itself illegal. A number of decisions have been cited by the learned Advocate for the appellant in support of the first part of the contention. It is not necessary to refer to all of them, since all the important decisions have been referred to in Krishnaswamy Rao v. Dundappa, 39 Mys LJ 402 : (AIR 1962 Mys 17), where the well established position is stated, namely that the views of the presiding officer at the time of inspection of the property in dispute can be used only for the purpose of better following and understanding the evidence adduced in the case or to its accuracy and the observations of the Judge cannot be substituted as evidence in the case or to contradict the evidence placed before the court and make it the foundation of the judgment. In this connection I should also refer to what has been stated on this point in the judgment in S.A. No. 292 of 1960 (Mys).

5. *If the learned Munsiff's decision had been based solely or mainly on his observation during the local inspection, it might well be that the judgment could not be sustained, but the learned Munsiff in paragraph 20 of his judgment states:*

"The truth or otherwise of the evidence of the witnesses on both the sides, can be



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determined by the observation made by me at the time of inspection of the disputed spots, in the presence of both the parties and their counsel. ""

(Emphasis supplied)

(6) In the case of **BINNY LTD. Vs. H.K.MADIAH⁶**, this Court, at paragraphs 20 to 22 and 31 has held as under:

"20. Power of holding spot or local inspection has been conferred upon both the Civil and Criminal Courts. Order XVIII Rule 18 of the Code of Civil Procedure provides for the power of the Civil Courts to inspect. It stipulates that the Court may at any stage of a suit inspect any property or thing concerning which any question may arise: and where the Court inspects any property or thing, it shall as soon as may be practicable make memorandum of any relevant factss observed and such memorandum shall form part of the record of the suit. Section 310 of the Code of Criminal Procedure. 1973, empowers the Criminal Courts to hold local inspection. It provides that any Judge or Magistrate may at any stage of an enquiry, trial or other proceedings, after due notice to the parties visit and inspect any place in which an offence is

⁶ MANU/KA/0284/1986



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alleged to have been committed or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such enquiry or trial and shall without unnecessary delay, record a Memorandum of any relevant factss observed at such inspection and such Memorandum shall form part of the records of the case.

21. *In Hariprasad Sahu v. Ropna Kharia MANU/BH/0122/1938 dealing with the scope of Order XVIII Rule 18 of C.P.C. the Patna High Court observed :*

"Order XVIII Rule 18 lays down clearly that the Court may, at any stage of the suit, inspect any property or thing concerning which any question may arise. But a series of decisions have laid down that the observations by a judge in the course of his local investigation cannot be substituted for the evidence of witnesses examined on the subject. It is obvious that in the case of a judge's observations, the parties never get a chance of cross-examining him on the various points raised or setting right his views if they are found to be erroneous."

In Achutharamayya v. Soorappayya MANU/TN/0325/1938 : AIR 1939 Mad 61 the Madras High Court dealing with the local inspection by the Court under Order XVIII Rule 18 of the Cods of Civil Procedure, observed :



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"When the judge welcomes the presence of crowds of anonymous villagers and indulges in informal inquiries amongst the people in those crowds for the purpose of obtaining guidance in deciding the rights of the parties and treats the result of those inquiries as evidence in the case, there is an end of all judicial procedure. A judgment must be based on evidence which is admissible in law. There is no objection to adjudge viewing the place in dispute in order to enable him to visualize the locality and to appreciate the evidence before him. But there is absolutely no warrant for the procedure whereby the judge converts himself into an unofficial investigator and enquires of all and sundry regarding their views of the rights of the parties with the object of founding a judgment on what he has heard."

This Court in Appayya Naika v. State of Mysore AIR 1964 Mys 177 had to deal with the scope and ambit of local inspection held by a criminal court in a proceedings under Section 145 of the Code of Criminal Procedure in exercise of its power under Section 539B of the code of Criminal Procedure, 1898 (same as Section 310 of the Code of Criminal Procedure, 1973) wherein it is laid down:

"Where in proceedings under Section 145, the Magistrate, in deciding the question of actual possession of the property in dispute held a local inspection at the suggestion of the parties, although the circumstances disclosed did not justify it, relied upon the extra-judicial information that he collected during the local inspection, largely allowed the impression created during the local inspection to influence his conclusion, freely made use of the revenue records which were



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not part of the records of the proceedings without affording opportunity to the party adversely affected by The conclusion to rebut that evidence, based his conclusion solely on the title deeds and did not consider at all the statements made by the witnesses in their affidavits filed on behalf of the parties;

Held : that the order deciding the question of aactual possession of the deputed property was vitiated and could not be supported and was liable to be set aside in revision."

(7) (as paraphrased in the Head Note)

22. *All these decisions dealing with the scope of local inspection either by the Civil Courts or by the Criminal Courts are of the unanimous view that the power of local inspection cannot be extended to use the observations by a Judge in the course of his local inspection as a substitute for the evidence of the witnesses examined on the subject as, in the case of a Judge's observation, the parties never get a chance of either cross-examining on the various points raised or setting right his views if they are found to be erroneous, that there is no objection to a Judge viewing the place in dispute in order to enable him to visualise the locality and to appreciate the evidence before him and there is absolutely no warrant for the procedure whereby the Judge converts himself into an unofficial investigator and enquires all and sundry regarding their views of the rights of the parties with the object of founding a judgment on what he has*



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heard and to rely upon the extra-judicial information that he collected during the local inspection and allow the impression created during local inspection to influence his conclusion. In other words, the scope of the local inspection is primarily limited to make use of the observations made by the Judge on inspecting the spot for the purpose of enabling him to better appreciate the evidence adduced by the parties and proper understanding of the case. Logically it follows that conducting of the enquiry or the trial, and examination of the witnesses should precede the holding of the local inspection and not vice-versa. Further in the case of local inspection, the Judge is not empowered to question the people gathered at the time of the local inspection and collect information from them as it is usual that a large body of men would collect when a Judge or other authority go for local inspection and incorporate the summary of their say in his local inspection report and obtain their signature to it and make use of the same for moulding his decision one way or the other. This is essentially so when the power given to the Judge or the authority is one of local inspection and not local investigation or local enquiry.



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In my view, these principles equally apply respecting the power of holding local inspection conferred on the Tribunals under the Act.

31. *As noticed earlier, the scope of the local inspection is primarily limited to make use of the observations made by the Judge/Tribunal on inspecting the spot for the purpose of enabling him/it to better appreciate the evidence adduced by the parties and proper understanding of the case. Logically it follows that conducting of the enquiry or trial and examination of the witnesses should precede the holding of the local inspection and not vice-versa. That is why local inspection is made part of the enquiry and not independent of the enquiry. Since the power of local inspection given to the Tribunal under the Act is to enable the Tribunal to better understand and appreciate the evidence on record, the proper stage at which local inspection to be conducted is only after the parties placed their evidence on record. Holding of local inspection before the parties placed their evidence on record would amount to putting the cart before the horse and would serve no purpose. On the other hand, it will have the effect of creating an impression in the mind of the Tribunal and it would result in pre-judging the issue before*



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understanding the nature and scope of the evidence to be adduced by the parties. Thus it looks to me as noticed earlier that the local inspection shall have to be conducted only after recording the evidence and not before, so as to do full justice to the parties. The observation of this Court made in Laxmi Shedthi's case ILR 1980 (Kar) 195 (Supra) --

"It is no doubt true that if a state of things is shown to exist, an inference of its continuity within a reasonable proximate time both forwards and backwards, may sometimes be drawn" -- will not help to contend that the local inspection may be held even before recording the evidence.

(Emphasis Supplied)

(8) In the case of **S.J.RAMAN PHOTO STUDIO AND OTHERS Vs. A.K.M.NOORE AND OTHERS⁷**, at paragraphs 4 and 6, it is held as under:

"4. XXX

It is significant to notice that Rule 18 is placed under Order 18 bearing the caption "Hearing of the suit and Examination of Witnesses." Above all, rule. 18 is placed at the end of the said Order. Preceding the said rule, the other rules prescribe

⁷ MANU/TN/0349/1986



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as to who is to open the case and as to how the witnesses are to be examined. The facts that it is placed at the end of the Order will amply indicate that if, after hearing the evidence the court feels that unless it has local inspection, it will not be possible for it to appreciate the evidence in its true sense, only then shall the court exercise the power under Rule 18 and inspect the suit property. In other words, the power has to be used sparingly but not readily as has been done by the appellate authority in this case. I have already referred to the facts that the appellate authority, while inspecting the premises, had the assistance of an Assistant Engineer from the P.W.D. who was also examined as a witness.

6. *In this case, I have already extracted the reliefs claimed in the petitions. This will indisputably indicate that by inspection the Appellate Authority is expected to assess the age of the building, conditions and nature of construction of the foundation, walls and the ceiling and also such other features as the Appellate Authority may observe with regard to the present conditions of the building and also to ascertain whether the present structure could take the load of further constructions. Thus what the*



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Appellate Authority was asked to do by inspection is to have its own idea about the age of the building, etc. This is what is prohibited in law. If the court should exercise its power of inspection under Order 18, Rule 18 on matters of evidence and if on such impression it had at the time of inspection, the court should decide, the party against whom the decision would be rendered would be left helpless because he has no right of cross-examining the learned Judge in the instant case, the Appellate Authority. If this caution is borne in mind, then the limitation that is imposed under Order 18, Rule 18 can easily be perceived. As already pointed out by me, the right to inspect has to be exercised cautiously, only when the court feels that without inspection it will not be possible for the court to assess the evidence and to dispose of the lis, resort can be had to their power.

(Emphasis Supplied)

(9) In the case of **PENAKKOT AYISHA Vs. KODACHERY THAZHAM POTTAYIL KUNHATHUTTY⁸**, at paragraph 5, it is held as under:

"5. The Privy Council in (1907) ILR 31 Bom 381 (PC) reversed the decision of the Bombay High

⁸ MANU/KE/0043/1973



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Court in appeal solely on the basis of the local inspection made by the Judges. All the High Courts in this country have followed this principle. The Supreme Court recently had occasion to refer to this point in Ugam Singh and Mishrimal v. Kesrimal, (1970) 3 SCC 831 = (AIR 1971 SC 2540) and their Lordships proceeded to decide the case before them accepting this principle as correct. At page 838 their Lordships observed thus:

"The judgment in our view is not based solely on the result of personal inspection made by the Trial Judge, which inspection was for the purposes of understanding the evidence in the case and has been so used by the Trial Judge. We must therefore, reject the contention of the learned Advocate for the appellants that the finding in respect of the idol is vitiated. In this view it is not necessary to deal with any of the decisions referred to before us."

The same interpretation must be given to Rule 137 as it conforms to reason and fair-play in the determination of rights of parties by any Tribunal whether it is a Court or not. Rule 137 does not enable the Land Tribunal to make use of his inspection report to base his conclusion. The object of this provision is only to enable the Tribunal to understand questions that are being raised and to follow and apply the evidence. The purpose of local inspection is not to bring fresh evidence on record or to substitute it for evidence but is only to assist



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in the appreciation of the evidence. Unfortunately this is not what has been done in this case. The Tribunal's conclusion is entirely based on its inspection report. Thus the procedure adopted by the Land Tribunal in basing his conclusion on his inspection report is clearly unjustified and illegal. It cannot be supported in law."

7. Considering the scope and object of Order XVIII Rule 18 of the CPC, the principles that would emerge are as follows:

- (a) The Court may at any stage of a suit, inspect any property or a thing upon which any question may arise.
- (b) The Court is vested with the power to make inspection if it is necessary and when the court is satisfied that without inspection it would be impossible to assess the evidence and to dispose of the *lis*.
- (c) The Court can exercise *suo motu* power of inspection or on an application of either party.



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- (d) The object of Order XVIII Rule 18 of the CPC is to understand the evidence on record by inspecting the property in question to ascertain certain factual aspects and to appreciate the evidence on record. The exercise of power by the Court under the aforesaid Rule should be generally after recording the evidence in the suit and only upon satisfaction that there is a ambiguity on certain factual aspects.
- (e) The exercise of power under Order XVIII Rule 18 of the CPC, should be used sparingly and must not be done in a routine manner. The exercise of power by the Court under the aforesaid Rule is to avoid unnecessary ambiguous interpretation of the evidence by the parties, and the procedure is intended to advance the cause of justice.
- (f) The object of local inspection is to enable the Court to understand the questions raised and to



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properly appreciate, follow and apply the evidence adduced before it, and not to gather independent evidence.

- (g) The observations made by the Court during the course of inspection, are required to be recorded in the form of memorandum of facts as soon as may practicable and the said facts shall form a part of the record of the suit.
- (h) The memorandum of facts cannot be the sole basis to conclude the *lis* between the parties, although it can be taken into consideration while pronouncing the judgment. The said memorandum of facts recorded by the Court during the course of inspection must be used merely as a tool to appreciate the evidence on record and nothing beyond that, since the parties neither have an opportunity to question the facts recorded by the Court during the local inspection nor have an opportunity to cross-



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examine the Judge. Hence, the Trial Court, while referring to the contents of the memorandum of facts recorded during the inspection, must do so cautiously as the memorandum of facts cannot, in itself, be treated as a piece of evidence for answering the issues or adjudicating the dispute between the parties.

- (i) The parties to the proceedings have a right to argue on the correctness of the observations recorded in the memorandum of facts by the Court during the local inspection by pointing out the pleadings and evidence on record.
- (j) The local inspection by the Court and consequential recording of the memorandum of facts noticed during such inspection, is only for the purpose of better understanding of the evidence on record and to test its accuracy.



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- (k) The Court cannot convert itself into an unofficial investigator by making enquiries from persons at the spot regarding the rights of the parties or by relying upon extra-judicial information gathered during the inspection. The power under Order XVIII Rule 18 of the CPC is confined to local inspection for enabling the Court to understand the questions arising in the suit.
- (l) The Court cannot use the impressions or opinions formed during local inspection to contradict a witness or to determine the truthfulness of the evidence of either the plaintiff or the defendant.
- (m) The Presiding Officer must remain neutral while conducting local inspection and should not become a party to the spot inspection or conduct an enquiry in a manner which may prejudice the rights of either party.



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- (n) Failure to place or preserve the memorandum or notes of inspection on record does not, by itself, vitiate the entire trial. Such failure may amount to an irregularity in the proceeding, but would not, affect the merits of the case.
- (o) Where expenses are required to be incurred for such inspection, the requisite sanction of the District Judge is necessary for levying or incurring such expenses, in accordance with the applicable procedural requirements.

8. In the case on hand, the petitioner filed a suit for injunction against the respondents. In the said suit, the petitioner-plaintiff filed an application for temporary injunction. The respondents-defendants filed objections to the said application. The Trial Court, on 14.07.2022, heard the arguments of the learned counsel for the plaintiff and adjourned the matter to 18.07.2022 for defendants' arguments. On 18.07.2022, the Court visited



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the suit schedule property and recorded the memorandum of facts and thereafter, on the same day, heard the arguments of the plaintiff and the defendants on an application for temporary injunction filed by the plaintiff and posted the case for orders on 12.08.2022. The records indicate that the application for temporary injunction was rejected by the Trial Court.

9. It is to be noticed that the inspection of the suit schedule property conducted by the learned Presiding Officer is at the stage of considering the application for temporary injunction filed by the plaintiff. The scope and object of Order XVIII Rule 18 of the CPC, referred *supra* indicates that the exercise of power, though provided under the CPC at any stage of the proceedings, is for the purpose of better understanding of the evidence on record and only on the Trial Court coming to the conclusion that it is just and necessary to conduct the local inspection to advance the cause of justice.



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10. In the present case, the Trial Court has committed a grave error in prematurely exercising the power under Order XVIII Rule 18 of the CPC even before recording the evidence. It is to be noticed that the local inspection was conducted on 18.07.2022 between 01.50p.m. to 02.10p.m. and in the memorandum of facts, the Court referred to certain names of the persons, who were stated to have been present during the inspection and posed questions to them as to who is in possession of the suit schedule property. In my considered view, such exercise of power by the Trial Court, though available under the law, was uncalled for at the stage of consideration of the application for temporary injunction.

11. The contention of the learned counsel for the respondents that unless the said memorandum of facts is referred and the order is passed, it cannot be challenged, is a correct proposition of law. However, considering the



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peculiar facts and circumstances of the case on hand, allowing such memorandum of facts on record of the Court would cause prejudice to the plaintiff. The memorandum of facts indicates the aspect of the possession over the suit schedule property, which was prematurely recorded and hence, is required to be set aside.

12. For the aforementioned reasons, I proceed to pass the following:

ORDER

- i. The writ petition is ***allowed***.
- ii. The impugned proceedings dated 18.07.2022 recording the memorandum of facts in O.S.No.290/2022 by the I Additional Civil Judge and JMFC, Malavalli, is set aside.

No order as to costs.

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**