

KABG040019012023



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC,
AT : BELAGAVI.**

PRESENT : Smt. Preeti L. Malavalli, B.B.A.,LL.B (Hons.)
Prl. Civil Judge & JMFC.,
Belagavi.

DATED THIS THE 4TH DAY OF JULY-2026

EXECUTION PETITION NO.294/2023

Decree Holder :

1)	Shri. Kiran S/o. Laxman Jadhav, Age : 50 years, Occ : Engineer, R/o : Maruti Building, Rana Pratap Road, Tilakwadi, Belagavi.
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Vs.

Judgment Debtor :

1)	Shri. Nagaraj S/o. Mahaveer Patil, Age : 48 years, Occ : Mechanical, R/o : Swamy Ayyappa Garage, Mahatma Phule Road, Shahapur, Belagavi.
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PARTIES TO I.A.NO.III**Applicant/Third Party :**

1)	Smt. Nagamati W/o. Chandrakant Patil, Age : 45 years, Occ : Household, R/o : 143/1, 4 th Main, 3 rd Cross, Shivanand Nagar, Navanagar, Hubballi, Dist : Dharwad.
	(By Shri. A. A. Patil, Adv.)

Vs.**Opponent/Decree Holder :**

1)	Shri. Kiran S/o. Laxman Jadhav.
	(By Shri. K. V. Muppayyanavarmath, Adv.)

1.	Provision under which application is filed	U/O.XXI Rule 97 R/w. Sec.47 and Sec.151 of C.P.C.
2.	Relief sought for	To determine & adjudicate third party's right, title & interest in the suit schedule property
3.	The date on which the application is filed	29.11.2023
4.	Number of application	III
5.	The date on which the objections are filed by different opponent	11.12.2023

6.	The date on which the orders were passed on the said application.	04.07.2026
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**ORDERS ON I.A.NO.III FILED U/O.XXI RULE 97 R/W.
SEC.47 & SEC.151 OF C.P.C.**

The counsel for third party applicant has filed application U/O.XXI Rule 97 R/w. Sec.47 and Sec.151 of Code Civil Procedure (I.A.No.III), to determine and adjudicate her right, title and interest in the suit schedule property.

2. In the affidavit annexed to the accompanying application, the applicant has stated that the D.Hr. had filed suit in O.S. No.722/2010 before this Court for possession of suit property and eviction of J.Dr. from the suit property on termination of alleged lease. That the suit was decreed by this Court by Judgment and Decree dated 06.07.2017 and the same came to be confirmed by Hon'ble High Court of Karnataka in MSA No.100150/2017 vide order dated 30.03.2021 and accordingly D.Hr. has filed this Execution Petition for execution of said Judgment and Decree. That the third party applicant is the absolute owner in lawful possession, use and enjoyment of the property measuring 50 feet X 25 feet consisting of a shed comprised in R.S.No.241/A and 241/B situated at Mahatma Phule Road, Shahapur, Belagavi bounded by East, West, North and South by remaining portion of

R.S.No.241/A and 241/B. She has further stated that the said property was earlier owned by one Shri. Narayan Dhakappa Muchandikar and he sold the same in favour of father of third party applicant Shri. Mahaveer Jinnappa Patil on 20.07.2001 which was regularized by paying requisite stamp duty on 04.02.2016. That out of love and affection towards the third party applicant, her father executed Registered Gift Deed on 22.11.2016 and the third party applicant took physical possession of said property on the said date. The third party applicant has been paying tax over the said property to the City Corporation and she has also been paying the electricity charges. She has further stated that the suit property involved in O.S.No.722/2010 is a portion of Plot bearing No.31 (old No.33) comprised in CTS No.5627 and its R.S.No.241/A and 241/B measuring 20 feet X 20 feet = 400 sq.ft. with temporary tenement situated at Mahatma Phule Road, Shahapur, Belagavi. That the D.Hr. is trying to impress upon this Court that the property described in Para-4 of her affidavit is the same as the suit property in O.S.No.722/2010 and the D.Hr. himself is unaware of the existence or location of suit property in O.S.No.722/2010.

ii) The third party applicant has further stated that the D.Hr. is trying to evict her from her property described above since 30.05.2021. But, she has been trying to convince D.Hr. that her property is not the same as the suit property in O.S.

No.722/2010. She has further stated that she has got an independent right, title and interest over the property described above which she has obtained under Registered Gift Deed dated 22.11.2016. That the said property is distinct from the suit property in O.S.No.722/2010. But, D.Hr. is trying to illegally dispossess the third party applicant from her property. That the third party applicant has already filed a separate suit in O.S. No.584/2021 before Hon'ble V Addl. Civil Judge, Belagavi against the D.Hr. seeking the relief of Permanent Injunction in respect of her property and the said case is pending consideration. As such, the J.Dr. has sought to decide her right, title and interest in the property which D.Hr. has described as suit property in O.S. No.722/2010 and which the D.Hr. is trying to take possession of.

3. The said application has been resisted by Decree Holder by filing objection, wherein he has stated that the third party applicant has filed the present application at the instigation of Judgment Debtor in order to protract the litigation and to avoid execution of decree. That the third party applicant has no locus-standi to file the present application as she has no right, title, interest in the subject matter of this proceeding. That the D.Hr. filed suit in O.S.No.722/2010 before this Court and same came to be decreed on 06.07.2017 and it is also confirmed by the Hon'ble High Court of Karnataka in MSA No.100150/2017 on 30.03.2021 and hence D.Hr. has filed the present Execution Petition. But it is

false that the third party applicant is the absolute owner in possession of property measuring 50 feet X 25 feet consisting of shed comprised in R.S.No.241/A and 241/B situated at Mahatma Phule Road, Shahapur, Belagavi. The D.Hr. has denied the contents of affidavit filed by third party applicant that the said property was earlier owned by one Narayan Dhakappa Muchandikar and he sold the same to the father of third party applicant on 20.07.2001. He has also denied the contention of third party applicant that she is in physical possession of said property by paying property tax and electricity charges. He has also denied that he has been trying to evict the third party applicant from the property described in the application. He has further stated that the third party applicant does not have any remedy at all before this Court since the document i.e., the alleged sale deed relied upon by the third party applicant is unregistered document and mere regularization of said document by paying stamp duty is not sufficient. That the property shown in the Execution Petition and the one shown in the aforesaid alleged document are totally different and they are not related to each other. That the third party applicant cannot claim independent right, title and interest over the subject matter of this Execution Petition. That the J.Dr. herein had set up similar contentions in O.S.No.722/2010 wherein he is alleged tenant under Narayan D. Muchandikar, but this Court has overruled such contentions and

passed decree in favour of D.Hr. The J.Dr. also preferred Regular Appeal in R.A.No.22/2017 before Hon'ble I Addl. Senior Civil Judge, Belagavi and the same came to be allowed by framing certain issues and the matter was remanded to this Court. On the basis of said Judgment and Decree in R.A.No.22/2017, the D.Hr. preferred MSA No.100150/2017 before Hon'ble High Court of Karnataka and the same came to be allowed by confirming the Judgment of this Court in O.S.No.722/2010 with a direction to the J.Dr. to handover the suit property within a period of three months. But however, the J.Dr. did not deliver possession to decree holder and hence this Execution Petition came to be filed. Now the J.Dr. is playing all tactics in order to avoid delivery of possession. When this matter posted for arguments on merits, the J.Dr. instigated the third party applicant to file the present application. That during pendency of O.S.No.722/2010, the present J.Dr. started encroaching upon the remaining portion of the suit property and hence the D.Hr. filed another suit in O.S. No.529/2011 for the relief of Permanent Injunction and the same came to be decreed on 04.01.2014. Further, the J.Dr. again started encroaching upon the remaining portion of suit property in the year 2019 by disobeying the restraining orders passed against him.

ii) The D.Hr. has further stated that Court Commissioner was appointed for removal of encroachment in

E.P.No.248/2021, but J.Dr. preferred Regular Appeal in R.A. No.19/2023 before Hon'ble I Addl. Senior Civil Judge, Belagavi. That the third party applicant also does not have any subsisting right, title or interest over the suit property, but she is claiming right in respect of a totally different property. Also, the application filed by third party applicant in O.S.No.584/2021 for temporary injunction against the present D.Hr. before Hon'ble V Addl. Civil Judge, Belagavi also came to be rejected. The third party applicant slept over the matter and has filed the present application at belated stage and she has no locus-standi to interfere with the execution of decree passed in O.S.No.722/2010. That the third party applicant will not suffer any loss or hardship if application is rejected by this Court and on the other hand, the D.Hr. will suffer untold loss and hardship if the same is allowed. On these grounds, the Decree Holder has prayed to dismiss the present application with costs.

4. In order to prove her contentions, the third party applicant got herself examined as PW-1 and another witness as PW-2 and got marked as many as 33 documents at Ex. P.1 to Ex. P.33. Per contra, the D.Hr. has not led evidence, but he has got marked 5 documents at Ex. R.1 to Ex. R.5 during cross-examination of PW-1 and PW-2 on confrontation.

5. Heard the arguments of learned counsel for third party applicant Shri. A. A. Patil and learned counsel for D.Hr. Shri. K. V. Muppayyanavarmath. Perused the application, petition, objection and documents on record.

6. The following points arise for my consideration :

1) Whether the third party applicant has made out sufficient grounds to allow the application and whether she proves that the suit schedule property shown in this Execution Petition comes within the property of third party applicant ?

2) Whether the third party applicant proves that she has got independent right over the suit schedule property shown in this Execution Petition and hence she is entitled to object the delivery of possession of said property to D.Hr. ?

3) What order ?

7. My findings on the above points are as follows :

Point No.1 : In the Negative.

Point No.1 : In the Negative.

Point No.3 : As per final order for the following:

REASONS

8. **Point No.1 and 2 :** These points are interlinked with each other, hence they are taken up together for common discussion in order to avoid the repetition of facts.

9. The present Execution Petition arises out of the Judgment and Decree in O.S.No.722/2010 wherein the Judgment Debtor has been directed to quit and vacate the suit schedule property and to handover the same to the plaintiff/D.Hr. However, the present applicant being the third party applicant, filed application U/O.XXI Rule 97 C.P.C. for adjudicating her right, title and interest in the suit property. The third party applicant has been examined as PW-1 and she got examined another witness as PW-2 and got marked 33 documents at Ex. P.1 to Ex. P.33. Per contra, the respondent/D.Hr. Has not led any oral evidence, but he has got marked 5 documents during the course of cross-examination of PW-1.

10. The third party applicant has mainly contended that her property measures 50 feet X 25 feet consisting of a shed comprised in R.S.No.241/A and 241/B situated at Mahatma Phule Road, Shahapur, Belagavi which is bounded by the remaining portion of R.S.No.241/A and 241/B on East, West, North and South and her father Mahaveer Jinnappa Patil had purchased the same from one Narayan Dhakappa Muchandikar on 20.07.2001

which was regularized by paying requisite stamp duty on 04.02.2016 and her father had gifted away the said property out of love and affection to the third party applicant by executing Registered Gift Deed dated 22.11.2016 and accordingly the third party applicant has been in physical possession and enjoyment of said property. She has further contended in Para-8 of affidavit annexed to the application and in Para-8 of her affidavit filed in lieu of her examination-in-chief that the suit schedule property shown in O.S.No.722/2010 is unidentifiable and D.Hr., himself is not sure about the identity and location of suit schedule property in O.S.No.722/2010 and now the D.Hr. is trying to illegally dispossess her from her property which is shown in the affidavit filed along with I.A.No.III filed U/O.XXI Rule 97 C.P.C.

11. The Decree holder has filed detailed objection to the said application wherein he has contended that the suit schedule property is identifiable and distinct and this suit schedule property and the property claimed by third party applicant are entirely different and as such the third party applicant does not have any right, title, interest over the suit schedule property and she is unnecessarily objecting the delivery of possession of the same to D.Hr.

12. The third party applicant i.e., Smt. Nagamati Patil has been examined as PW-1. She has reiterated all the facts stated in affidavit annexed to application U/O.XXI Rule 97 C.P.C. in the

course of her examination-in-chief. She has produced Registered Gift Deed executed by her father Mahaveer Jinnappa Patil in her favour at Ex. P.1 and the Sale Deed dated 20.07.2001 executed by one Narayan Dhakappa Muchandikar in favour of father of third party applicant at Ex. P.2. She has also produced Tax Paid Receipt pertaining to her property at Ex. P.3, RTC Extracts of Sy.No.241/B and 241/A at Ex. P.4 and Ex. P.5 respectively. She has also produced handwritten RTC Extract pertaining to R.S. No.241/A and 241/B, Self Assessment Demand Notice regarding payment of tax, some Tax Paid Receipts at Ex. P.6 to Ex. P.12, Electricity Bills at Ex. P.13 and Ex. P.14, Tax Paid Receipt and Tax Assessment Extracts for the year 2022-23 at Ex. P.15 and Ex. P.16. It is pertinent to note that the third party applicant is none other than the direct sister of Judgment Debtor in this case i.e., Nagaraj Patil and she admits the same in Para-1 and 2 of her cross-examination dated 05.07.2024. She also admits that the present D.Hr. Kiran Jadhav had filed suit in O.S.No.722/2010 against her brother Nagaraj Patil. It is pertinent to note that the present third party applicant had filed a suit in O.S.No.584/2021 against the present D.Hr. on the file of V Addl. Civil Judge, Belagavi and PW-1 also admits the same in Para-2 of her cross-examination dated 05.07.2024. She further admits that the certified copy of plaint which was confronted to her during cross-examination is the plaint in O.S.No.584/2021 and it came to be

marked as Ex. R.1. PW-1 also admits that she has produced Sale Deed in O.S.No.584/2021 which is marked in this case as Ex. P.2. It is pertinent to note that the suit schedule property in O.S. No.722/2010 on the basis of decree of which the present Execution Petition is filed is as follows :

‘The portion of Plot bearing No.31 (its old No.33) comprised in CTS No.5627 and its R.S.No.241/A and 241/B measuring 20 feet x 20 feet = 400 sq.ft. with temporary tenement situated at Mahatma Phule Road, Shahapur, Belagavi bounded by East – Road, West – Remaining portion of Plot No.31, North – Remaining portion of Plot No.31 and South – Plot No.30.’

The suit schedule property in O.S.No.584/2021 shown in Sale Deed marked at Ex. P.2 and the property claimed by third party applicant as shown in Ex. P.1 Gift Deed is as under :

‘All part and parcel of the property measuring 50 feet X 25 feet with shed arising out of R.S.No.241/A and 241/B, situated at Mahatma Phule Road, Shahapur, Belagavi, within the limits of Corporation of the City, Belagavi and within the jurisdiction of Sub-Registrar, Belagavi. The property is bounded by :

East : By remaining portion of said R.S. Number.

West : By remaining portion of said R.S. Number.

North : By remaining portion of said R.S. Number.

South : by road.'

13. PW-1 clearly admits in Para-2 of her cross-examination dated 05.07.2024 that the suit schedule property shown in Ex. R.1 (Plaint in O.S.No.584/2021 filed by third party applicant against D.Hr.) and property shown in Ex. P.2 Sale Deed are one and the same. She also admits in next breath that the suit schedule property shown in Ex. R.1 (Plaint in O.S.No.584/2021) and the suit schedule property and boundaries shown in Ex. P.1 Gift Deed are one and the same. She further clearly admits that she has withdrawn O.S.No.584/2021 as can be seen from Ex. R.4 i.e., Appeal preferred challenging the order on I.A. for temporary injunction filed in O.S.No.584/2021. She further admits in Para-6 of her cross-examination that her brother Nagaraj Patil (present J.Dr.) had filed Appeal before Hon'ble High Court of Karnataka challenging Judgment and Decree in O.S. No.722/2010. She further states that the contents of Para-6 of Ex. R.1 (Plaint in O.S.No.584/2021) are correct. In Para-6 of Ex. R.1, the third party applicant who had filed the said suit in O.S. No.584/2021 has clearly stated that as per order of Hon'ble High Court of Karnataka in MSA No.100150/2017, the Hon'ble High

Court has ordered Nagaraj Patil (the defendant in O.S. No.722/2010) to vacate the suit schedule property within a period of two months and the suit schedule property in O.S.No.722/2010 was the portion of Plot No.31 (its old number 33) comprised in CTS No.5627 and its R.S.No.241/A and 241/B measuring 20 feet X 20 feet = 400 sq.ft. situated at Mahatma Phule Road, Shahapur, Belagavi. The said property is the present suit schedule property in this Execution Petition.

14. PW-1 clearly admits in Para-6 of her cross-examination dated 05.07.2024 that the property shown in Gift Deed (Ex. P.1) and the suit schedule property in the present case i.e., in the present Execution Petition are entirely different and she has no independent right over the suit schedule property of this Execution Petition. She further clearly admits that she has no objection for delivery of possession of suit schedule property in this Execution Petition in favour of D.Hr. by the J.Dr. Nagaraj Patil. All these admissions coupled with the documents referred above clearly go to show that suit schedule property shown in this Execution Petition is entirely different from the property of third party applicant which is shown in Ex. P.1 Gift Deed and Ex. P.2 Sale Deed.

15. It is pertinent to note that the present third party applicant is claiming right over the property of her shown in O.S.No.584/2021 on the basis of Sale Deed produced at Ex. P.2 which is

unregistered Sale Deed executed on 20.07.2001. On the basis of the same, the father of third party applicant Mahaveer Jinnappa Patil had executed Registered Gift Deed dated 22.11.2016, and all the Tax Paid Receipts, Assessment Register Extract, RTC of R.S.No.241/A and 241/B, Electricity Bills produced by third party applicant have come into existence on the basis of the same. Since the sale deed was not registered and the value of property is more than Rs.100/-, it will not confer any right, title and interest over the same to Mahaveer Jinnappa Patil. The person having no title cannot confer any better title to the transferee. But anyhow the admissions given by PW-1 clearly go to show that the suit schedule property in present Execution Petition is entirely different from the property claimed by third party applicant. It is pertinent to note that the suit schedule property shown in this Execution Petition is facing towards East since road is shown towards East and on the western, northern and southern side, Plot No.31 and 30 are shown. Whereas, the property claimed by third party applicant is facing towards South since road is shown towards South, and on the eastern side, western side and northern side, the remaining portion of R.S.No.241/A and 241/B are shown.

16. As stated supra, the third party applicant has got examined one more witness as PW-2 to prove that the property claimed by decree holder comes within the property of third party applicant.

But, PW-2 is none other than cousin of PW-1 and he admits the same in Para-2 of his cross-examination dated 28.10.2024. PW-2 clearly admits in Para-3 of his cross-examination dated 28.10.2024 that the third party applicant Nagamati Patil is in possession of suit schedule property shown in O.S.No.584/2021 and said suit schedule property along with boundaries shown in O.S.No.584/2021 is entirely different from the suit schedule property of this Execution Petition which is the property of D.Hr. Kiran Jadhav. He further admits that he has no objection for delivery of possession of suit schedule property in this Execution Petition in favour of D.Hr. excluding the property of third party applicant Nagamati Patil. He also admits in next breath that the property held by Nagamati Patil does not bear plot number or CTS number. But, it is pertinent to note that the suit schedule property shown in this Execution Petition is assigned with CTS Number as 5627. In this regard, it is to be noted that in Para-6 of objection to main petition filed by J.Dr., he has contended that present suit schedule property is not in existence and it has been acquired by Belagavi City Corporation for road widening in the year 2009-10 and J.Dr. is not in possession of the suit schedule property. But, it is pertinent to note that the suit itself was filed in the year 2010 and this contention could have been taken by J.Dr. in the original suit itself. But it appears that he has not taken any such contention in O.S.No.722/2010.

17. From all the aforesaid discussion, it is clear that the suit schedule property shown in this Execution Petition is clearly identifiable and distinct and the third party applicant has no right, title or interest over the same and she has no right to object the delivery of possession of the same to D.Hr. In this regard, the learned counsel for D.Hr. has relied on a decision of Hon'ble High Court of Karnataka in **P. Balaji Vs. Smt. R. Bharathi Muralidhar and others**, reported in **HCR 2025 Kant. 385** wherein it is held that *in case of application U/O.XXI Rule 97 of C.P.C., the Court need not conduct elaborate enquiry and if the Court is prima facie satisfied with regard to nature of claim raised by objector it can reject the application of objector*. The said decision comes to the aid of D.Hr. as he has proved that the suit schedule property in this petition is clearly identifiable and it is different from the property of the third party applicant. Accordingly, I answer **Point No.1 and 2 in the Negative**.

18. **Point No.3** : For the above said discussion on Point No.1 and 2, I proceed to pass the following :

ORDER

The application filed by third party applicant U/O.XXI Rule 97 R/w. Sec.47 and Sec.151 of Code of Civil Procedure (I.A.

**No.III) is hereby rejected with costs of
Rs.1,000/-.**

(Dictated to the stenographer directly on computer, revised by me & after corrections pronounced in the open Court on this the 4th day of July-2026.)

**(Smt. Preeti L. Malavalli)
Prl. Civil Judge & JMFC, Belagavi.**

ANNEXURE

1. List of witnesses examined by the third party applicant :

PW-1 : Smt. Nagamati W/o. Chandrakant Patil.
PW-2 : Dharshan Pradeep Patil.

2. List of documents got marked by the third party applicant :

Ex. P.1 : Registered Gift Deed dated 22.11.2016.
Ex. P.2 : Sale Deed dated 20.07.2001.
Ex. P.3 : Tax Paid Receipt.
Ex. P.4 : RTC Extract of R.S.No.241/B.
Ex. P.5 : RTC Extract of R.S.No.241/A.
Ex. P.6 : Certified copy of handwritten RTC Extract of R.S.No.241/A.
Ex. P.7 : Certified copy of handwritten RTC Extract of R.S.No.241/B.
Ex. P.8 : Self Assessment Property Extract.
Ex. P.9 to 11: Demand Notices.

- Ex. P.12 : Tax Assessment Extract.
Ex. P.13 & 14 : Electricity Bills.
Ex. P.15 : Tax Paid Receipt.
Ex. P.16 : Tax Assessment Extract.
Ex. P.17 : Registered Mortgage Deed.
Ex. P.18 : Trade Licence.
Ex. P.19 : Receipt pertaining to Ex. P.18.
Ex. P.20 : Registration Certificate.
Ex. P.21 : Form No.4.
Ex. P.22 to 31 : Tax Invoices.
Ex. P.32 & 33 : Tax Invoice Books.
Ex. P.32(a) to 32(k), 33(a) to 33(c) : Invoices pertaining to Ex. P.32 & 33.

3. List of witnesses examined by the decree holder :

-NIL-

4. List of documents got marked by the decree holder :

- Ex. R.1 : Certified copy of Plaint in O.S.No.548/2021.
Ex. R.2 : Certified copy of Interim Application in O.S.No.584/2021.
Ex. R.3 : Certified copy of Order on I.A. in O.S.No.584/2021.
Ex. R.4 : Certified copy of Notice in Misc. No.43/2022.
Ex. R.5 : Certified copy of Written Statement in O.S.No.584/2021.

(Smt. Preeti L. Malavalli)
Prl. Civil Judge & JMFC, Belagavi.