

KABG300012092023



**IN THE COURT OF SENIOR CIVIL JUDGE,
BAILHONGAL, AT: BAILHONGAL**

PRESENT:

**Shri. Ravi Babu Chawan,
B.A. LL.B.,
Senior Civil Judge, Bailhongal.**

E.P. No.138/2023

Dated this the 6th Day of July 2026

Shri. Umesh Basavantappa Kanakammanavar,
Age: 39 years, Occ: Agriculture,
R/o: Aravalli, Tq: Bailhongal,
Dist: Belagavi.

.....Decree Holder

(By Shri. I.M.A., Advocate)

-Vs.-

Shri. Fakirappa Hanamanthappa Hirebil,
Age: 53 years, Occ: Agriculture,
R/o: Devalapur, Tq: Bailhongal.

.....Judgment-Debtor

(By Shri. M.S.A., Advocate)

PARTIES TO IA No.3 and 4

Shri. Umesh Basavantappa Kanakammanavar,
Age: 39 years, Occ: Agriculture,
R/o: Aravalli, Tq: Bailhongal,
Dist: Belagavi.

.....Applicant/Dhr.

(By Shri. I.M.A., Advocate)

V/s.

Shri. Fakirappa Hanamanthappa Hirebil,
Age: 53 years, Occ: Agriculture,
R/o: Devalapur, Tq: Bailhongal.

.....Opponent/Jdr.

(By Shri. M.S.A., Advocate)

ORDER ON IA No.3 AND 4

The decree-holder has filed I.A. No.3 under Section 151 of C.P.C., praying to direct the Taluka Surveyor to assist the Court Commissioner in identifying and demarcating the suit properties at the time of execution of the possession warrant.

The decree-holder has also filed I.A. No.4 under Order XXI Rule 35 of C.P.C., praying to a issue possession warrant of delivery of possession of the suit property in terms of the sale deed executed by the Court Commissioner in his favour.

2. In the affidavits filed in support of the applications, the decree-holder has contended that in the present execution petition, this court had appointed a Court Commissioner for execution of the sale deed in pursuance of the decree passed in O.S. No.25/2020. Accordingly, the Court Commissioner has executed and registered the sale deed in favour of the decree-holder. It is further stated that the judgment debtor has not obtained any order of stay against the decree or the execution proceedings. It is further contended that, if the possession warrant is executed with the assistance of the Taluka Surveyor, no hardship will be caused to the judgment debtor. On the contrary, the judgment debtor would suffer irreparable loss. Hence he has prayed for allowing both the applications.

3. On the other hand, the judgment debtor has filed detailed objections contending that the applications are not maintainable in the eye of law. It is contended that the decree-holder, by playing fraud upon the the judgment debtor got executed an agreement of sale deed dated 22-06-2015 in respect of the suit property for a meager sale consideration of Rs.6,90,000/-, though the market value of the property at the relevant point of time was more than 7 to 8 lakhs. According to the judgment debtor, the decree

has been obtained on the basis of a concocted and fabricated agreement of sale. It is further contended that the judgment debtor has preferred a Regular Appeal No.86/2025 before the Hon'ble Prl. District and Sessions Judge Court, Belagavi, challenging the judgment and decree passed in O.S. No.25/2020, wherein the decree-holder has entered appearance. The said appeal is pending for consideration of the application seeking stay of the judgment and decree. Hence, according to the judgment debtor, the present applications are not tenable in the eye of law and liable to be dismissed.

4. It is further contended that the agreement of sale is more than 10 years old and therefore, before issuing a possession warrant, it is necessary to ascertain whether the suit property is still in the possession of the judgment debtor. Further it is contended that the decree holder has not produced any material to establish the present possession of the property. It is also contended that after execution of sale deed, the decree holder is require to institute a separate suit for recovery of possession and cannot seek delivery of possession in the present execution petition. According to the judgment debtor, the Taluka Surveyor has no authority to handover possession

without appropriate orders of the competent authority. It is further contended that, the Court Commissioner has no authority to deliver possession or to make any recital regarding delivery of possession in the sale deed and such recital is wholly illegal. On these grounds, the judgment debtor has prayed for dismissal of the applications with costs.

5. Heard the learned counsel for the decree-holder and the learned counsel for the judgment debtor. Perused the pleadings, affidavits, objections and material available on record.

6. The points that arises for consideration are as under:

POINTS

- 1) Whether the decree-holder has made out sufficient grounds for issuance of a possession warrant under Order XXI Rule 35 of C.P.C.?
- 2) Whether the decree-holder has made out sufficient grounds to direct the Taluka Surveyor to assist the Court Commissioner during execution of the possession warrant?
- 3) What order?

7. My finding to the above points are as under:

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.2: As per final order for the following:

REASONS:

8. **Point No.1 and 2:-** Since these points are interconnected to each other, they are taken together for common discussion to avoid repetition of facts.

9. The records reveal that the decree passed in O.S. No.25/2020 has culminated into the present execution proceedings. Pursuant to the decree, this court appointed a Court Commissioner to execute the sale deed on behalf of the judgment debtor. In compliance with the order of this court, the Court commissioner has executed and registered the sale deed in favour of the decree-holder. Thus, the decree has been substantially executed insofar as execution of the sale deed is concerned. The grievance of the decree-holder is that despite execution of the sale deed, actual possession of the suit property has not been delivered to him. Therefore, he seeks issuance of a possession warrant under Order XXI Rule 35 of C.P.C.

10. The principal objections of the judgment debtor is that, the decree has been obtained by fraud and that a regular appeal in R.A. No.86/2025 has been filed challenging the decree. However, admittedly no material is produced to show that the appellate court has granted any stay of operation or execution of the decree. It is a settled principle of law that, mere filing an appeal does not operate as a stay of the decree. Unless, the execution of the decree is stated by the competent court, the executing court is bound to execute the decree as it stands.

11. The objections relating to fraud and adequacy of the consideration and validity of the agreement of sale pertain to the correctness and legality of the decree itself. The executing court cannot travel beyond the decree or examine its legality or correctness. Until the decree is modified or set aside by the appellate court, it remains valid and executable.

12. Further, the contention that the decree-holder has to institute a separate suit for recovery of possession also cannot be accepted. Once a decree for specific performance has been executed by registration of the sale deed through process of the court, the executing court is fully empowered under Order XXI

Rule 35 of C.P.C., to deliver possession in execution itself wherever the decree holder is entitled to such relief of possession. Therefore, no separate suit for recovery of possession is required.

13. The objection of J.Dr. that the Court Commissioner had no authority to mention delivery of possession in the sale deed is also devoid of merit. The present applications are not based upon any recital contained in the sale deed but are founded upon decree passed by the competent Civil Court. The delivery of possession is sought through a possession warrant issued by this court under the provisions of Code of Civil Procedure.

14. As regards I.A. No.3 is concerned, this court is of the considered opinion that the assistance of the Taluka Surveyor would facilitate proper identification and demarcation of the suit property at the time of execution of possession warrant and would avoid unnecessary disputes. Such direction would ensure effective implementation of the decree without causing prejudice to the either party. Accordingly, this court holds that the decree-holder has established the sufficient grounds for issuance of a possession warrant and for directing the Taluka Surveyor to assist during

execution of possession warrant. Hence, the point Nos.1 and 2 are answered in the ***Affirmative.***

15. **Point No.3**:- In view of the above my findings and discussion made on point Nos.1 and 2, I proceed to pass the following:

ORDER

I.A. No.3 filed under Section 151 of C.P.C., by the decree-holder is hereby allowed.

I.A. No.4 filed under Order XXI Rule 35 of C.P.C., by the decree-holder is hereby allowed.

Office shall issue possession warrant over delivery of possession of suit property to the decree-holder in accordance with the decree passed in O.S. No.25/2020.

The Taluka Surveyor concerned is directed to remain present and assist the Court Bailiff in identifying, measuring and demarcating the suit schedule property

while executing the possession warrant in accordance with law and submit the compliance report to this Court.

No order as to costs.

Await Bailiff report.

(Dictated to the stenographer, transcribed and computerized by him and corrected by me, then pronounced in the open Court on this that 6th Day of July 2026)

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.

