

**IN THE COURT OF PRL. CIVIL JUDGE AND JMFC, ANEKAL.**

**17<sup>th</sup> day of September 2025**

**PRESENT:** Sri. Shankarareddy.D.V., L.L.B., PGD in IR & PM.,  
Prl. Civil Judge and JMFC, Anekal.

**EX. No.06/2023**

**Decree holder** : Sri. T Ramaiah,

**V/s.**

**Judgment Debtor** : Manjula & Others

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**ORDERS ON MEMO**

The present execution petition filed by the DHR U/o.XXI Rule 11 of CPC to obtain sale deed and possession in respect of suit schedule properties in view of the judgment and decree passed in RA No.7/2022 on the file of Hon'ble Senior Civil Judge and JMFC, Anekal.

**2.** Subsequently, the JDR not appeared before the court, though notice duly served upon her. Hence, at the instance of application filed by the DHR, the court commissioner appointed for execution of the sale deed. And, court commissioner executed a sale deed in favour of DHR in respect of suit schedule properties. Thereafter, before delivery of possession of suit property to the DHR, the objectors by name Bhagyalakshmi and

seven others filed application U/o.XXI Rule 97 and 99 of CPC praying to set aside the aforesaid judgment and decree and also prayed to declare that registered sale deed dated 07-09-2023 executed through court commissioner in favour of DHR in respect of petition schedule properties unsustainable.

**3.** In the mean time, on 30/8/2025 the DHR filed the memo praying to close the present execution petition as decree satisfied. The said memo opposed by the objector by filing detailed objection, wherein the objectors contend that they are the absolute owners and in possession of petition schedule property and the JDR has no saleable right in respect of petition schedule property and thereby the objectors filed IA No.5 U/o.XXI Rule 97 and 99 and CPC praying to set aside aforesaid decree passed in the said RA No.7/2022 and also prayed to declare that sale deed executed through commissioner is not sustainable and further contends that without deciding said application i.e., IA No.V filed U/oXXI Rule 97 and 99 of CPC this court cannot close the present execution proceedings as decree satisfied and further contends that possession of petition property not yet delivered through court as per the aforesaid judgment and decree passed

in RA No.7/2022. With these grounds, the objectors prayed to dismiss the memo dated 30-08-2025.

4. Having heard both side and on perusal of material available on record, the following points arise for consideration;

1. Whether the DHR made out valid grounds to allow the memo dated 30-08-2025?
2. What order?

5. On appreciation of material available on record, the above points are answered as under;

POINT No.1 :- In the Negative,

POINT No.2 :- As per final order,

for the following ;

### **REASONS**

**6. Point No.1**:- Admitted facts are that the DHR herein filed OS No.50/2021 against the JDR herein before this court for specific performance in respect of petition schedule property and said suit came to be dismissed. Aggrieved by the said judgment and decree, the DHR herein prepared appeal at RA No.7/2022 before the Hon'ble Principal Senior Civil Judge and JMFC, Anekal and said regular appeal came to be allowed with a direction that JDR herein shall execute sale deed in respect of petition schedule

property and delivery of possession of suit schedule property to the DHR. But, the JDR not complied the said direction as per the judgment and decree passed in RA No.7/2022. Therefore, the DHR filed the present execution petition for obtaining sale deed and possession in respect of petition schedule properties.

In the present execution, notice duly served on JDR. But, the JDR not appeared before the court and not executed the sale deed in respect of petition properties and also not delivered the vacant possession of petition schedule properties. Therefore, at the instance of DHR, the court commissioner appointed for execution of sale deed and the court commissioner also executed sale deed in respect of suit properties in favour of DHR and before ordering to delivery of vacant possession of suit property the objectors filed IA No.V U/o XXI Rule 97 and 99 of CPC praying to set aside the aforesaid judgment and decree on the ground that they are the owners in possession and enjoyment of petition schedule properties and they also prayed to declare that sale deed executed by court commissioner on 07-09-2023 is not sustainable.

When matter stood for objection to said IA No.V, the DHR filed the memo dated 30-08-2025 praying to close the present execution proceedings as decree satisfied and said memo opposed by the objectors on the aforesaid grounds.

In **Anwarbi V/s Pramod D.A. Joshi – (2000) 10 SCC 405** the Hon'ble Supreme Court observed that “where obstruction to execution of decree being caused, then same should be adjudicated U/o XXI Rule 101 of CPC.

In **Asgar V/s Mohan Varma – (2000) 16 SCC 230** the Hon'ble Supreme Court observed “a stranger to a decree is entitled to agitate his/her grievance and claim for adjudication for an independent right, title and interest in the decretal property U/o. XXI Rule 99 of CPC”.

In **Brahmdeo Choudhary V/s Rishikesh Prasad Jaswal & Anr** reported in **AIR 1997 SC 856** – The Hon'ble Supreme Court observed that “though U/o.XXI Rule 97 of CPC empowers DHR or purchaser to file application for removal of obstruction, in view of Sec.47 of CPC even a third party can also file application under the above said provision to agitate his right over the decretal property”.

In **Shamsher Singh & Anr V/s Lt. Col. Nahar Singh (Dead) through & Ors and others-(2019) 17 SCC 279**, the Hon'ble Supreme Court observed that " third person other than judgment debtor complained its dispossession from the suit property by decree holder or purchaser in execution of decree, can no longer be put back into possession merely an establishing there that such third party was in possession prior to being dispossession from suit property. All questions including right, title or interest in the property between the parties to the proceedings arising on application under rule 99 by such third person, are required to be adjudicated by executing court itself dealing with application. Only thereafter question of possession of suit property can be decided no separate suit is required. Order of adjudicating court shall be treated as decree.

In view of the aforesaid law laid down by Hon'ble Supreme Court, it is clear that the third party can claim his right, title or interest and possession in respect of petition/suit schedule properties U/o. XXI Rule 97 and 99 of CPC in the execution proceedings and same has to be decided by the court in the very execution proceedings and not of in separate suit. In the case on

hand, the objectors filed IA No.5 U/o.XXI Rule 97 and 99 of CPC claiming their right, title and interest over the suit/petition schedule property and also prayed to set aside aforesaid said judgment and decree and to declare that sale deed dated 07-09-2023 executed by the court commissioner is unsustainable. In the circumstance, without deciding the said application (IA No.V) on merit the present execution petition cannot be closed by considering the memo dated 30-08-2025 as decree satisfied.

Further, it is important to note that though sale deed executed through court commissioner on 07-09-2023 in respect of petition schedule properties, the possession of suit/petition schedule properties not delivered to the DHR, as the objectors are claiming that they are in possession of decretal properties. In the circumstance, it can be said that decree not satisfied. In this situation, the present execution petition cannot be closed as decree satisfied without deciding the rights of the objectors in accordance with law. Therefore, memo dated 30-08-2015 filed by the DHR is devoid on merit and same is liable to be dismissed. In the result, point No.1 answered in the negative.

7. During the course of argument the learned counsel for the DHR by relaying the decision reported in **1971 AIR 856-D.P Misra Vs K.N Sharma** of Hon'ble Supreme Court submitted that "Executing court cannot go behind the decree, until decree is set aside in appeal or revision". In the case on hand, as discussed herein-above, facts and situations are different. Therefore, with due respect to the Hon'ble Supreme Court this court opines that the said principle not applied to the case on hand.

The learned counsel for the DHR also relied upon one more decision in support of his argument i.e., **1996(1)Kar.L.J.381- Abdul Khader Vs Khajabi(dead) by Lrs.** In the said decision, the Hon'ble High Court of Karnataka observed that objection can be filed against draft sale deed before it is approved by court and no objection can be maintained against same after it is approved and registered. Therefore, with due respect to the Hon'ble High Court, this court opines that said decision also does not apply to the case on hand.

**8. Point No.2:** For the reasons assigned in point No.1, this court proceeds to pass the following:-

**ORDER**

Memo dated 30-08-2025 filed by the DHR is hereby dismissed.

*(Directly dictated to steno, corrected, signed and pronounced by me in Open Court on this the 17<sup>th</sup> day of September 2025.)*

**(Sri. Shankarareddy D.V)**  
**Prl. Civil Judge & JMFC., Anekal.**