

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
AT DEVANAHALLI**

PRESENT

Sri. MADHUSUDHANA D.K., B.A. LL.B.
Senior Civil Judge & J.M.F.C.,
Devanahalli.

Dated this the 12th Day of February, 2021

Execution Petition No.2/2014

Smt. Ayesha Parveen @ Munni : **Decree holder**

(Petr. - By Sri.
Khalay A. Shariss,
Advocate)

- V/s. -

Smt. Fathima : **Judgment debtor**

(Jdr. - Exparte)
(P.Jdr. - By Sri.
K. Narasimhamurthy,
Advocate)
(P.Jdr.2 - By Sri.
M. Gangadhar,
Advocate)

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**Orders on I.A.No.2 dated 31.10.2015 filed by the Decree
Holder under Order 1 Rule 10(2) r/w. Section 151 of
C.P.C.**

The decree holder has filed I.A.No.2 dated 31.10.2015
under Order 1 Rule 10(2) r/w. Section 151 of C.P.C. seeking

addition of two more judgment debtors to the above execution petition. In support of his I.A.No.2, the decree holder has deposed to the affidavit and she has deposed that, she is the decree holder and she is well conversant with the facts of this case. The decree holder further deposed to that, she obtained decree of Specific Performance of Contract in respect of Sale Agreement in O.S.No.84/2005 and the Court was pleased to decree the said suit in part on 11.03.2008 by directing the judgment debtor on record to return the sale consideration with interest. But, the decree holder has filed R.A.No.54/2008 and the Hon'ble 1st Appellate Court was pleased to allow the said appeal. Being aggrieved by the judgment of the 1st Appellate Court, Sri. Saifulla Khalid has filed RSA.No.1583/2010 and he has contended that, he is a bonafide purchaser of 1 acre out of 1 acre 20 guntas of the suit schedule property. The decree holder and the said Sri. Saifulla Khalid have compromised before the Hon'ble High Court of Karnataka in RSA.No.1583/2010 and 06 guntas of land was given to the ownership and possession of the decree holder out of the 1 acre purchased by Sri. Saifulla Khalid and the said person had retained remaining 34 guntas. This being the case, the decree holder has filed the above execution petition only in respect of 20 guntas of land.

2. The decree holder has further deposed in the affidavit that, after service of notice of the above petition, the judgment debtor has remained exparte and as per the Order of this Court she was directed to produce the compromise decree

and latest R.T.C. Extract of the petition schedule property. Therefore, she has applied for the R.T.C. Extract and she found that, the names of proposed judgment debtors were mentioned in the R.T.C. Extract to an extent of 15 guntas and 0.02 guntas respectively as per MR.No.6/2005-06 and 0.01 guntas was entered in the name of the decree holder. The said changes in the R.T.C. Extract was not within the knowledge of the decree holder and therefore, the decree holder has filed the above I.A.No.2 seeking impleading of proposed judgment debtors to this execution petition.

3. After the service of notice the proposed judgment debtor No.1 has appeared through his Advocate and he filed his objections to the I.A.No.2. In the application, the proposed judgment debtor No.1 has contended that, the provisions of Order 1 Rule 10(2) of C.P.C. are not applicable to the execution proceedings. The proposed judgment debtors were neither parties in the original suit nor they were parties in the subsequent appeal and the compromise decree passed in the 2nd appeal is not binding on them. Therefore, they are not the necessary or proper parties to this execution petition. It is further contended in the objections that, 15 guntas of land in Sy.No.35/2 of Doddappanahalli Village originally belonged to one Syed Sardar, who acquired the same in a family partition. Subsequently, the said person and his wife have sold the said 15 guntas in favour of proposed judgment debtor No.1 under a registered sale deed and on the same day he was put in

possession. The original judgment debtor Smt. Fathima was neither owner nor in possession of the said 15 guntas and hence, the proposed judgment debtor No.1 prayed for dismissal of the I.A.No.2.

4. Both side counsels have argued on the I.A.No.2. The counsel for decree holder has relied on reported judgment of the Hon'ble High Court of Karnataka in between ***T.L. Rajagopal V/s. S.N. Shivakumar.*** The proposed judgment debtor No.1 has relied on

- 1. I.L.R.1995 KAR 1815*** in between
Choodanatha Setty V/s.
Gopalachetty
- 2. Judgment of the Hon'ble Apex***
Court in Civil Appeal
No.4631/2019 in between
Karnataka Housing Board V/s.
K.A. Nagamani.

5. After hearing the arguments of both sides and on perusal of the documents, for the consideration of the Court, the following Points are arisen

POINTS

- 1. Whether the decree holder shows that, the proposed judgment debtors can be impleaded in the above**

execution proceedings under the provisions of Order 1 Rule 10(2) of C.P.C.?

2. What Order?

6. On appreciation of factual and legal aspects involved in the above case, the Court answers the Points as follows:

Point No.1 : In the Negative

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

REASONS

7. **Point No.1:-** The learned counsel for the decree holder has relied on the judgment of the Hon'ble High Court of Karnataka reported in **ILR 2014 KAR 4035** in between **T.L. Rajagopal V/s. S.N. Shivakumar** in support of his arguments that, the execution proceedings are continuation of the suit and therefore, the provisions of Order 1 Rule 10(2) of C.P.C. are applicable and impleading of judgment debtors is permissible. In the said reported case relied by the plaintiff's counsel, the Hon'ble High Court of Karnataka was pleased to hold that, ***in the light of the ratio laid down in the aforementioned judgments, the law on the point can be said to be fairly settled: A decree for Specific Performance being in the nature of a preliminary decree, the Court after passing of the said decree does not become functus officio. It***

retains the jurisdiction to conclude the further steps to be taken in the suit. The decree holder chooses to file an execution petition for getting the sale deed registered through the Court when the defendant who suffered the decree fails to obey the same. Though called 'execution proceedings', it is nothing but continuation of the original suit. After careful examination of the above judgment and the circumstances under which the Hon'ble High Court of Karnataka has held that, ***'execution proceedings', it is nothing but continuation of the original suit*** the said judgment was rendered in respect of ***the right of judgment debtor/defendant to approach the Court under Section 28 of the Act seeking rescission of contract.*** The said judgment was not rendered in respect of an application for impleading judgment debtors in an execution proceedings and therefore, the said reported judgment of the Hon'ble High Court of Karnataka is not helpful to the case of plaintiff as the same is not applicable to the case in hand.

8. The another judgment that has been relied by the plaintiff's counsel is in between **Baluram V/s. P. Chellathangam and Others** reported in **(2015) 13 SCC 579** and the counsel for the decree holder has argued that, in the above judgment the Hon'ble Supreme Court was pleased to rely on the earlier judgment of **Kasturi ({2005} 6 SCC 733)** and held that, ***a transferee of the property which is the subject matter of the contract is a necessary party.*** If we carefully

examine the circumstances under which the above judgment of the Hon'ble Apex Court in **Baluram's case** was rendered, then we can see that, the question before the Hon'ble Apex Court was **whether the High Court was justified in reversing the Order of the Trial Court allowing the prayer of the appellant to be added as a party in a suit for Specific Performance filed by the respondent No.1/plaintiff?** By holding that, the High Court was not justified in reversing the Order of the Trial Court in allowing prayer of the appellant to be added as a party, the Hon'ble Apex Court allows the appeal. The said judgment was also rendered in a case where an application for impleading was filed in a suit and not in execution proceedings. Therefore, the said **Baluram's** judgment is also not helpful to the case of the plaintiff as the said judgment is also not applicable to the case of the decree holder.

9. On the other hand, the counsel for the impleading judgment debtor No.1 has relied on **ILR 1995 KAR 1815** in between **Choodanatha Setty V/s. Gopalachetty**, wherein, the Hon'ble High Court of Karnataka was pleased to hold that, **at the outset it should be mentioned that, Order 1 Rule 10 C.P.C. does not apply to execution proceedings**. The above judgment is directly on the point in issue in the present case and therefore, applicable to the case in hand.

10. The counsel for the impleading judgment debtor No.1 has also relied on another judgment in between **Karnataka**

Housing Board V/s. K.A. Nagamani, wherein the Hon'ble Apex Court was pleased to rely on the Full Bench judgments of the Patna High Court and the Andhra Pradesh High Court and the Honb'le Apex Court has affirmed the findings that, **Execution Proceedings even though they are proceedings in a suit, cannot be considered to be a continuation of the original suit.** Therefore, if we combine the effect of both the above two judgments relied by the counsel for the impleading judgment debtor No.1, it is made clear that, the provisions of Order 1 Rule 10(2) of C.P.C. are not applicable to the execution proceedings and it is not permissible to implead the judgment debtors in the execution proceedings. Therefore, the **Point No.1 is answered in the Negative.**

11. **Point No.2:-** For the above discussion, the Court proceeds to pass the following:

ORDER

The I.A.No.2 filed by the decree holder under Order 1 Rule 10(2) r/w. Section 151 of C.P.C. seeking impleading of judgment debtors is hereby rejected.

**(MADHUSUDHANA D.K.)
Senior Civil Judge & JMFC.,
Devanahalli.**