

19.08.2022

DHR. - K.A.S.
JDR. - Exparte
P.JDR. - K.N.M.
P.JDR. - M.G.

For Orders

ORDERS ON I.A.No.4

The decree holder has filed the I.A.No.4 under Order 6 Rule 17 of C.P.C by seeking amendment of execution petition schedule **to delete 20 guntas and to add 17½ guntas in its place and to amend the execution petition schedule by including the following boundaries as bounded on the East by: Land of Gaffor Sab, West by: Land of Ameer Sab, North by: Drainage, Panchayath Road and Remaining Land in Sy.No.35/2 and South by: Government Kere** in the petition schedule.

2. In support of the I.A.No.4, the decree holder has filed affidavit on oath by deposing that, he has obtained decree in respect of Specific Performance of Contract in O.S.No.84/2005 in respect of 1 acre 20 guntas in Sy.No.35/2. The said suit was decreed by directing the defendant to pay Rs.50,000/- with interest to the Decree Holder. Therefore, the decree holder has filed R.A.No.54/2008 and same is allowed in his favour by directing the defendant to execute the sale deed. The defendant No.3 of the suit has filed R.S.A.No.1583/2010 before the Hon'ble High Court of Karnataka and the said third defendant has purchased 1 acre out of 1 acre 20 guntas of the property. Before

the Hon'ble High Court of Karnataka, a compromise was entered into between the decree holder and the third defendant. Accordingly, the defendant No.3 has agreed to give 6 guntas in his 1 acre and he retained 34 guntas and therefore, the decree holder is in possession of 6 guntas given by the defendant No.3. The revenue entries are also entered to the name of decree holder in respect of 6 guntas and the Sy.No.35/2 is renumbered as Sy.No.35/11. The decree holder has filed the above petition against the judgment debtor to execute sale deed in respect of 20 guntas as per the Sale Agreement. During execution of the petition, the 11E Sketch is required and therefore, when the decree holder has approached the Revenue Authorities for the said sketch, he came to know that, out of 20 guntas in Sy.No.35/2 an extent of 2½ guntas was used for the formation of drainage and panchayath road. Therefore, the decree holder is seeking amendment of petition schedule extent and boundaries to reduce it from 20 guntas into 17½ guntas and therefore, he has prayed for allowing his I.A.No.4.

3. In support of his application, the decree holder has produced the relevant R.T.C. Extracts and he relied on the Judgment reported in **2008(3) Bom CR 860** in between **Syed Akbar Syed Nooruddin V/s. Syed Abdul Haq**.

4. The judgment debtors have not filed any objections to the I.A.No.4.

5. The following points are arisen for consideration.

POINTS

1. Whether the amendment of petition schedule property is permissible?

2. What Order?

6. On perusal of the material on record and by considering the reported Judgment, the Court answer to the above points as follows;

Point No.1 : In the Affirmative

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

REASONS

7. **Point No.1:-** The decree holder is seeking reduction of extent of the property from 20 guntas into 17½ guntas for the reason of formation of drainage and road in the survey number of the suit schedule property. In the Judgment relied by the decree holder, the Hon'ble High Court of Bombay has held that, ***execution petition can be said to be a proceeding within the meaning of Section 141 of Code of Civil Procedure. With the aid of Section 141 of Code of Civil procedure, even the provision laid down under Order 6 Rule 17 of the Code can be made applicable in relation to amendment to the execution petition.*** Therefore, by following the Judgment of the Hon'ble High Court of Bombay and for the reason of non-filing of any objections by the judgment debtors and also for the reason of seeking reduction of the extent, the amendment of

execution petition is permissible and hence, the **Point No.1 is answered in the Affirmative.**

8. **Point No.2:-** For the discussion made on the above Points, the Court proceed to pass the following:

ORDER

The I.A.No.4 filed under Order 6 Rule 17 of C.P.C is hereby allowed.

The decree holder is permitted to carryout the amendment of execution petition schedule by inserting the proposed amendment as prayed in his application and he shall produce the amended petition on the next date of hearing.

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