

Order on I.A.No.VII & VIII

These applications have been filed by the counsel for objector to reopen the case to conduct cross examination of decree holder in this case.

2. In the affidavits accompanying the applications, the objector has stated that he has filed the application seeking leave of this court for adjudication of his right over the suit property. The enquiry was held and on last date of hearing the evidence of objector is closed. Thereafter, the decree holder has submitted that he has submitted the petition and documents, which may be considered as evidence. However, no opportunities given to cross examine the decree holder. Hence, the application.

3. The applications are opposed by the counsel for the decree holder by stating that the same is not maintainable. It is stated that the objector can not question the decree passed in favour of the decree holder and the court can not go behind the decree. The objector has to establish his title and possession on the documents, which he has relied upon. Hence, the question of cross examination of the decree holder does not arise. Hence, prayed to reject the applications with cost.

4. Heard both sides.

5. The following points would arise for my consideration:

1. Whether the objector has made out grounds to allow the applications?
2. What order?

6. My answer to the above points are as follows:

Point No.1 : **In the Negative**

Point No.2 : **As per final Order
for the following**

REASONS

7. Point No.1: The decree holder has filed the present execution petition for execution of the decree passed in RA No.54/2008 dated 09-04-2010 and RSA No.1583/2010 dated 24-01-2013. The present applicant filed I.A.No.5 as objector under Order 21 Rule 97 of C.P.C. Thereafter, the objector lead his evidence in support of I.A.No.5. The decree holder has submitted that the petition and the documents submitted by her may be considered as her evidence. Therefore, it is clear that the decree holder has failed to lead any evidence in this case. Therefore, the question of cross examining the decree holder by the objector does not arise. It is to be noted here that the objector has filed I.A.No. 5 by claiming his right over the suit schedule property. The burden is on the objector to establish the

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same independently. He can not rely upon the weakness of the opposite party. Therefore, the objector can not insist or force the decree holder to lead any evidence in support of the application filed by the objector. There is provision under law to draw adverse inference, when a party fails to enter into the witness box to lead evidence in support of his contention. Under such circumstances, the present applications are not maintainable under law and liable to be rejected. **Hence, I answer point No.1 in the Negative.**

8. Point No.2: In view of the above findings, this court proceed to pass the following:

ORDER

I.A. No.VII & VIII filed by the objector are rejected with cost of Rs.1,000/-.

For hearing on I.A.No. 5 finally
by **23-06-2026**

Sd/-
Prl. Senior Civil Judge & J.M.F.C.,
Devanahalli.