

**IN THE COURT OF CIVIL JUDGE AND JMFC.,
AT: MOLKALMURU**

PRESENT: SRI. SHRISHAIL.B.BAGADI

B.Com, LL.B. (Spl)

Civil Judge and JMFC, Molkaluru.

Execution Petition No. 36/2011

Dated this 20th day of December 2018

Decree holder :

Sri.B.Siddappa
S/o Late Gudihalli Boraiah,
Aged about 75 years
Occ: Rtd Court Sirestedar
R/o Doddauarthi village
Challakere Taluk.

(Rptd by Sri. L.P.P., Adv.,)

Versus

Judgment Debtors :

1. Smt. Gowaramma
W/o Late Poojari
Obaleshaiah,
Aged about 48 years
2. Sri.Boraiah
S/o Late Poojari
Obaleshaiah,
Aged about 30 years
3. Sri.Palaiah @ Muniyappa
S/o Kunta Obaleshaiah,
Aged about 50 years

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4. Sri.Obaleshi S/o Palaiah
Aged about 25 years
Judgment debtors all are
R/o Doddauarthi Village
Challakere Taluk.

(Rptd by Sri. D.J.R., Adv.,)

J U D G M E N T

The decree holder filed this execution petition against the judgment debtors for enforcing the judgment and decree passed in OS No.83/2003.

This matter was remanded back to this court as per orders passed by Hon'ble Senior Civil Judge, Challakere in Execution Appeal No.1/2018 and set aside the judgment dated 13.12.2017 and directed to dispose the matter afresh.

2. Factual matrix of the case is as under :

The decree holder had filed OS No.83/2003 before this court for permanent injunction against the judgment debtors, the suit was decreed on 15.03.2007 and passed permanent injunction against the judgment debtor, being aggrieved with the judgment and decree passed by this court the judgment debtors were preferred an appeal before the Hon'ble Senior

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Civil Judge Court, Challakere numbered as RA No.50/2007, the judgment debtor failed to get success in the appeal consequently, Hon'ble Senior Civil Judge dismissed the appeal and confirmed the judgment of the trial court. Therefore the decree holder is before the court with an allegation that, the judgment debtors have violated court decree by making encroachment in the suit property by dumped groundnut bran, hence the decree holder submitted that judgment debtors have violated the court decree and it is needs to enquire and sent them civil prison.

3. The judgment debtors after their appearance filed their objection to main petition, contended that the petition property is not existed within the boundary of Doddauarthi village and decree passed by this court is only a paper decree it cannot be executable. Further contended that the decree holder is a retired court staff having knowledge about court proceedings, as such the decree holder in order to give harassment filed this petition, hence prayed to dismiss the petition with cost.

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4. Heard arguments from both sides and also perused the records, the following points that arise for my consideration are as under;

POINTS

1. Whether the decree holder proves that the judgment debtors have violated the court decree?
2. What order?

5. The decree holder to prove his case examined himself as PW.1 and also examined one witness as PW.2 and got marked documents at Ex.P.1 to P.8, on the other hand Judgment debtor no.3 examined himself as RW.1 and got marked documents at Ex.R.1 to R.5, closed their side evidences.

6. Upon hearing arguments and on perusal of oral and documentary evidence adduced by both parties, my answers to the above said points are as follows.

Point no.1 : In the **'Negative'**

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

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REASONS

7. **Point no.1:-** The decree holder filed this petition for enforcing the judgment and decree passed in original suit no.88/2003 dated 15.03.2007, appeal preferred against the judgment came to be dismissed, there is no material before the court about pendency of regular second appeal. The judgment debtors have stated in their objection that, the suit property is not come within the boundary of Doddauarthi village and decree passed by this court in original suit no.88/2003 is only a paper decree as such it cannot be executable.

8. The judgment debtor further stated that, one of their family member had instituted original suit no.16/2010 before Hon'ble Senior Civil Judge court, Challakere against the decree holder for partition and separate possession, the suit came to be decreed and subsequently set aside by Hon'ble District Court, Chitradurga in RA No.40/2012. Therefore, as per judgment and decree passed in original suit no.88/2003 and regular appeal no.50/2007 the decree holder presumed to be in possession of the suit property, and also it was held in

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the regular appeal no.40/2012 that the decree holder is the absolute owner in possession of the suit property.

9. The specific allegation of the decree holder is that, the judgment debtor have illegally tress passed in the suit property and dumped ground nut bran, in this regard he approached to local police station for their intervention, but they did not shown any interest to resolve the dispute.

10. Therefore, the decree holder in order to prove his case examined himself as PW.1 and in his examination in chief affidavit reiterated the petition averments, in addition to oral evidence the decree holder has produced the documents got marked at Ex.P.1 to P.8, in these documents Ex.P.1 and P.2 are the certified copies of judgment and decree passed in OS no.88/2003 and RA no.50/2007, on perusal of these documents shows that the decree holder had succeeded in suit filed for permanent injunction against the judgment debtor. Ex.P.3 and P.4 are police endorsements, Ex.P.5 is the photograph, Ex.P.6 and P.7 are the judgment and decree passed in RA No.40/2012, on perusal of these documents discloses that the decree holder

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had given complaint to the police station with regard to removal of ground nut bran dumped in the suit property, further on perusal of judgment copies, reveals that the Hon'ble Appellate court declared the decree holder as absolute owner in possession of the suit property.

11. The decree holder established that he is the absolute owner of the suit property, but he has not produced any valid document to show that the judgment debtors were interfered in his peaceful possession and enjoyment of the suit property, he has produced only police endorsement copies but not produced complaint copy.

12. The judgment debtor no.3 examined himself as RW.1 and reiterated the averments made in the objection in his examination in chief of affidavit, learned counsel for decree holder fully cross examined the witness but nothing has been elicited from his mouth. The judgment debtor in addition to their oral evidence produced the documentary evidence marked at Ex.R.1 to R.5, in these documents Ex.R.1 is certified copy of order sheet of original suit no.16/2010. Ex.R.2

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is certified copy of plaint presented in original suit no.16/2010. Ex R.3 is certified copy of written statement filed in original suit no.16/2010 by the decree holder. Ex.R.4 and R.5 are the certified copies of judgment and decree passed in original suit no.16/2010.

13. The documents produced by the judgment debtor reveals that their family members were instituted the suit for partition against the decree holder and other members of his family, the suit came to be decreed, but as per judgment copy of RA No.40/2012, the judgment passed by Hon'ble Senior Civil Judge Court, Challakere was set aside, therefore the documents produced by the judgment debtor clearly goes to show that the decree holder is the absolute owner of the suit property.

14. The judgment debtor during pendency of this execution petition had filed an application for appointment of court commissioner to examine whether suit schedule property comes within the boundary of Doddauarthi village or not, accordingly he had submitted his report to the court on

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03.10.2017, submitting that petition schedule property comes within the boundary of Doddaullarthi village and the said property notified in the survey no.3 and also submitted that, the judgment debtors are in actual possession of the petition property. Therefore it is clear from the commissioner report that the judgment debtors are in actual possession of the suit property, but the said property is a part of survey no.3, as such it is difficult to ascertain the exact boundary of the suit property, further permanent injunction is a recurring cause of action, the possession of the one party may taken over by other party, as such commissioner report discloses that the judgment debtors are in possession of the suit property, but there is no formal proof before the court is that when the judgment debtors were taken the possession of the suit property. Therefore the decree holder failed to prove that the judgment debtors have violated the permanent injunction decree, as such based on oral evidence is not sufficient to hold that judgment debtors have violated the permanent injunction decree, hence I am answering point no.1 in the **Negative**'.

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15. Point No.2 : For the above said reasons and discussions, I proceed to pass the following,

ORDER

Execution Petition filed by the decree holder under order 21 rule 32 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the stenographer directly on the computer, typed by her, corrected by me, signed then pronounced in the open court on this the **20th day of December 2018**).

5/20/18
(SHRISHAIL.B.BAGADI)
CIVIL JUDGE AND JMFC.,
MOLAKALMURU.

ANNEXURE

1. WITNESSES EXAMINED ON BEHALF OF DECREE HOLDER:

PW-1: Sri.B.Siddappa S/o Late Gudihally Boraiah

PW-2: Sri. Obaleshaiah S/o Kavalu Ningaiah

2. DOCUMENTS MARKED ON BEHALF OF DECREE HOLDER:

Ex.P1 : Certified copy of decree passed in OS no.88/2003

Ex.P2 : Certified copy of decree passed in RA no.50/2007

Ex.P3 : Endorsement given by police

Ex.P4 : Endorsement given by police

Ex.P5 : Photograph

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Ex.P6 : Certified copy of judgment passed in
RA no.40/2012

Ex.P7 : Certified copy of decree passed in RA no.40/2012

Ex.P8 : Certified copy of valuation slip

3. WITNESSES EXAMINED ON BEHALF OF JUDGMENT DEBTORS:

RW-1: Sri.B.Siddappa S/o Late Gudihally Boraiah

4. DOCUMENTS MARKED ON BEHALF OF THE DEFENDANTS:

Ex.R1: Certified copy of order sheet of OS no.16/2010

Ex.R2: Certified copy of plaint presented in
OS no.16/2010

Ex.R3: Certified copy of w.s filed in OS no.16/2010

Ex.R4: Certified copy of decree passed in
OS no.16/2010

Ex.R5: Certified copy of judgment passed in
OS no.16/2010

5. REPORT SUBMITTED COURT COMMISSIONER:

Report submitted by Taluk Surveyor, Challakere

dt: 03.09.2017

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**CIVIL JUDGE AND JMFC ..
MOLKALMURU.**