



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND
JMFC., MUDIGERE.**

DATED: THIS THE 13th DAY OF JULY 2022

Present: Sri. Sachin.D, B.A., L.L.B.
C/c Addl. Civil Judge & JMFC.,
Mudigere.

Execution No: 4/2017

BETWEEN :

P.A.Thimmannagowda,
S/o Annegowda,
Aged about 59 years,
R/o Vidyanagara, Kasaba Hobli,
Mudigere Taluk. *... Decree Holder*

(By Sri. K.M.Prashanth, Adv.,)

AND :

B.B.Veerendra
S/o B.R.Biligowda,
Aged about 39 years,
R/o Byduvalli Village,
Billoor Post, Gonibeedu Hobli,
Mudigere Taluk. *...Judgment Debtor*

(By Sri. Sddaiah.D, Adv.,)

**PARTIES ON APPLICATION****BETWEEN :**

P.A.Thimmannagowda.
S/o Annegowda

... Applicant

AND :

B.B.Veerendra.
S/o B.R.Biligowda

...Opponent

**ORDERS ON APPLICATION FILED BY THE
DECREE HOLDER UNDER ORDER 21 RULE 32(5)
OF CPC**

The present application filed by the DHR seeking an order of this court to appoint the Deputy Conservator of Forest, Chikkamagaluru Division, Chikkamagaluru to carry out all acts, deeds and things required to be done in enforcement of the decree at the cost of the JDR and upon the acts, deeds and things being done, the expenses incurred may be ordered to be recovered from him as if they were included in the decree.

2. In the affidavit annexed to the application the DHR has deposed that he had filed suit in OS.No.171/2012 for the relief of specific performance



of contract on the agreement dated 10.10.2011 and also a recovery of money of ₹70,000/-. The said suit came to be partly decreed vide judgment dated 15.10.2015 directing the JDR to perform his part of contract as per the agreement dated 10.10.2011. Then the JDR had willfully failed to obey the decree by not allowing the DHR to cut, fell and transport the timber trees as per the agreement. After the disposal of the suit, DHR has approached the Deputy Conservator of Forest, Chikkamagaluru for renewal of the felling permit and the JDR did not allow the Forest authorities to renew the felling permit. It is further deposed that when he went to suit 'B' schedule property for extraction of the timber trees, the JDR has caused obstruction and in that regard, he had lodged the complaint before Gonibeedu police station. In spite of all efforts, he could not extract the timber trees as per the terms of the agreement due to obstruction of the JDR. Hence, the JDR willfully disobeyed and violated the decree passed by this court in OS.No.171/2012. It is further deposed that under the circumstances of the case, it is suitable to appoint Deputy Conservator of Forest,



Chikkamagaluru Division, Chikkamagaluru to carry out all acts, deeds and things required to be done for extraction of timber trees in accordance with the agreement dated 10.10.2011 and thereby enforce the decree passed by this court. The expenses incurred may be ordered to be recovered as if they were included in the decree. Hence, if the application is not allowed he will be put to untold hardship. Accordingly, prayed to allow the application and appoint the Deputy Conservator of Forest, Chikkamagaluru Division, Chikkamagaluru to carry out all acts, deeds and things required to be done for extraction of timber trees as per the agreement dated 10.10.2011.

3. In spite of opportunities, the JDR has not filed objection to the aforesaid application. Now, the following points arise for consideration.

1. Whether the DHR has made out sufficient grounds to allow the present application as sought for?

2. What order?



4. Having heard both side, the court perused the application, affidavit and other materials made available on record. Now, the findings of the court to the above points are as follows.

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

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

REASONS

5. POINT No.1: The present execution petition is filed by the DHR to execute the decree passed by this court in OS.No.171/2012, on 26.10.2015. Initially, the DHR had filed suit in OS.No.171/2012 for the relief of specific performance of contract and recovery of ₹70,000/- from the JDR. Whereas, the said suit came to be partly decreed and the defendant, who is the JDR herein has been directed to preform his part of contract as per agreement dated 10.10.2011 forthwith. Further, the relief regarding recovery of money of ₹70,000/- has been rejected. Now, the present application is filed by invoking the provision under Order 21 Rule 32(5) of CPC to appoint the Deputy Conservator of Forest, Chikkamagaluru



Division, Chikkamagaluru to carry out all acts, deeds and things required to be done in execution of the decree and to perform duties and the agreement dated 10.10.2011 on behalf of the JDR at the cost of the JDR and ordered to recover the same from him as if they were in the decree.

6. It is the contention of the DHR is that after the decree passed in OS.No.171/2012, he had approached the Deputy Conservator of Forest, Chikkamagaluru, for obtain the felling permission and to transport the timber. But, JDR has not allowed the Forest authority to renew the said permission. DHR in order to show that he had approached the concerned Forest authority soon after the decree in OS.No.171/2012 for seeking renewal of felling permit, no iota of document produced before the court. The xerox copy of the license or permit which produced by the DHR goes to show that said permission was granted on 12.06.2012,. Thus, the said permission is not obtain after the disposal of the suit. Hence, no iota of



documents are on record to believe the version of the DHR.

7. The another contention of the DHR is that he had went to suit 'B' schedule property which described in the decree for eviction of the timber tree, but the JDR has caused obstruction and in that regard, he had lodged the complaint before Gonibeedu police station. Therefore, he could not extract the timber tree as per the agreement dated 10.10.2011. In order to show that after the decree in OS.No.171/2012, the DHR went to the land of the suit 'B' schedule property for erection of the timber tree in terms of the agreement dated 10.10.2011 and the JDR caused obstruction and in that regard, he had lodged the complaint, no documents are produced at all. Therefore, at this stage in order to believe the version of the JDR, no documents on record.

8. Herein the present application, the DHR sought to appoint the Deputy Conservator of Forest, Chikkamagaluru Division, Chikkamagaluru to



perform all acts, deeds and things required to be done by the JDR in execution of the decree and also at the cost of JDR. The xerox copy of the agreement dated 10.10.2011 goes to show that the agreement was executed between the DHR and JDR with regard to erection of timber tree which is situated in Sy.No.115, 123/2 and 256 of Byduvalli village, Mudigere Taluk. Those survey numbers totally measuring more than exceeding 4 acres. Thus, it is a huge land. In order to cut the branches of the tree and erection of the timber tree in terms of the agreement dated 10.10.2011, the huge labour, machineries and other things are required and erection of timber tree may take long time such as months to months. The Deputy Conservator of Forest, Chikkamagaluru Division, Chikkamagaluru who is the Government servant has certain duties for his designation, at the Forest department and he has to do the same. If he has been appointed to carry out all acts, deeds and things required to be done in execution of the decree and he can't be performed all acts of his office. Further, he could not expense the huge amount to execute the decree and it is not



permissible him to recover the amount from the JDR. Hence absolutely, application filed by the DHR is not maintainable at all.

9. If at all, DHR had approached the concerned authority for felling permission after the decree and the JDR had obstructed for the same, he could have approach the police help by filing execution petition. Whereas, no such efforts made by the DHR till now. Moreover, in order to substantiate the contents of the affidavits, he has not produced any documents. Thus, it goes to show that the DHR after obtaining the decree without made any efforts to get erection of the timber in accordance with the agreement dated 10.10.2011, he simply filed the present application. Further, DHR at liberty to approach the concerned authority for seeking renewal of the felling permit which he already obtained and made efforts to erection of the timber tree in accordance with the agreement. If the JDR obstructed, they he could approach the court for police protection. Therefore, without making such efforts, the application filed by the DHR to appoint the Deputy Conservator of



Forest, Chikkamagaluru to perform all acts so as to execute the decree is not maintainable. It is well settled law that in execution of the decree any expenses incurred by the DHR can be recovered by the JDR. Since, the Deputy Conservator of Forest, Chikkamagaluru is the Government employee, he could not incur the expenses individually or through his department. Therefore, it is impossible to incur the expenses to perform the execution of decree and recover the same as if they included in the suit. Therefore, the application filed by the DHR is not sustainable at all in the eye of law. Hence, the DHR has not made out any grounds to allow the present application. Accordingly, this court answer **point No.1 in the Negative.**

10. POINT No.2: In view of the above findings on point No.1, this court proceed to pass the following.

ORDER

The application filed by the DHR under Order 21 Rule 32(5) of CPC is hereby dismissed.



No order as to costs.

*(Dictated to the stenographer, typed by him on computer, corrected and then pronounced by me in the open court on this the **13th day of July, 2022**)*

Sd/-

(Sachin. D)
C/c Addl. Civil Judge & JMFC,
Mudigere.