

: ORDER :

The Decree Holder / plaintiff has filed the present execution petition to execute the compromise decree dated 31/01/2011 entered into between the Decree Holder and Judgment Debtor. As per the compromise decree defendant has been directed to execute the sale deed in favour of plaintiff as per the agreement dated 03/05/1997.

2. The Judgment Debtor has filed objection to the petition stating that the execution petition is not maintainable either in law or on facts. The Judgment Debtor further stated that the Decree Holder has obtained the compromise decree by playing fraud misrepresentation and undue influence on the Judgment Debtor. Hence the decree is void. For the 10 acres of land in Sy.No. 94 of G. Hosahalli village, Mudigere Taluk the Saguvali Chit has been issued to the Judgment Debtor only in the year 2006. In the said saguvali chit there is a condition that the land granted cannot be transferred for the period of 25 years from the date of Saguvali Chit. Hence the Judgment Debtor cannot be compelled to

execute the sale deed in violation of Saguvali Chit conditions. The transfer if made it will be illegal transaction. The 10 acres of land or 2.20 acres of land in Sy.No. 94 of G. Hosahalli village, Mudigere Taluk is not pakka phoded without pakka phode of land the sale deed cannot be executed. For the above reasons the decree is not enforceable. Knowing fully well the above facts the Decree Holder has filed the execution petition to have wrong full gain. Hence, the Judgment Debtor prays to dismiss the petition on costs.

3. Heard both side. Perused the materials on record.

4. The present petition is filed by the Decree Holder to execute the compromise decree. The Decree Holder stated that if the decree is passed without jurisdiction then only can be challenged. The Decree Holder further stated that the decree is passed on the settlement before the parties before Lok-Adalath. The decree has to be implemented in the execution petition in accordance with law. The Judgment Debtor has not challenged the decree in any competent Court. Hence he

cannot challenge the decree in the execution proceedings. The executing Court cannot go beyond the decree. The objection raised by the Judgment Debtor not tenable and maintainable and not survive for consideration.

5. The compromise entered into between the parties resulted in decree. Since the matter is ended in compromise between the parties before Lok-Adalath it cannot be re-opened or challenged in the executing Court. The suit attained finality and the Judgment Debtor not challenged the matter in any competent form. The non alienation clause cannot be challenged considered at the present stage and it has to be challenged only in the original side. The objection raised by the Judgment Debtor cannot be considered at this stage. The Decree Holder has relied on the following decision:

1) Reported in AIR 1987 Madras 124 between Ganapathi and another Vs Balasubramania Gounder.

2) ILR 1986 KAR 4137 between Yajaman Mothi Ajjappa Vs Changalappa.

*3) CRP (NPD) No. 1370/2017 and
CMP No. 6366/2017 between K
Durasamy Vs E. Kuppusamy and
another.*

*4) 1991 (1) KLJ 48 between Dr.
K.P. Raghunath and another Vs the
Tahasildar Chikkamagaluru and
another.*

6. The counsel for Decree Holder argued that the executing Court must execute the decree as it stands and it cannot go into the correctness or validity of the decree except when the decree is a nullity. If the decree is of a Court with jurisdiction, the executing Court is bound to execute the decree as it stands. The question as to the validity of the decree is not one which can be agitated in execution because it is not a question which relates to the discharge or the satisfaction of the decree. The counsel for Decree Holder argued that the computation of prohibitory period from the date of grantee taking possession and not from the date of grant or issuance of Saguvali Chit. In this regard the counsel for Decree Holder has relied the decision reported in 1991 (1) KLJ 48.

In the decision it is stated that what is relevant is the factum of possession. It is certainly not permissible to apply the date of grant of the permanent Saguvali chit for the purpose of determining whether the land has been alienated within a period of 15 years commencing from the date of the permanent Saguvali Chit.

7. On the other hand the counsel for Judgment Debtor has produced the Saguvali Chit dated 22/08/2006 and stated that as per the clause No. 7 of the Saguvali Chit there is non alienation clause and the land cannot be alienated for a period of 25 years.

8. On verification of the said clause it reveals that the year of non alienation clause has been modified as 25 years instead of 15 years. But in words it is stated that the non alienation clause is binding only for 15 years from the date of possession i.e., 22/08/2006. The decree is signed on 31/01/2011. The parties have entered into compromise before Lok-Adalath and Judgment Debtor / defendant has consented for compromise decree. The Judgment Debtor and his counsel also signed

the compromise petition filed under order XXIII rule 3 of CPC before Lok-Adalath at Chikkamagaluru in O.S. No. 101/2010 and now Judgment Debtor cannot question the said decree in the execution proceedings. If he is aggrieved by the decree he has to challenge the decree before the competent forum. Hence, the objection raised by the Judgment Debtor not sustainable. Hence, this Court proceed to pass the following:

ORDER

The objection filed by the Judgment Debtor is hereby rejected. Case posted for steps. Call on 03/03/2023.

**(JAYAPRAKASH V.)
SENIOR CIVIL JUDGE & JMFC,
MUDIGERE.**