

ORDER ON I.A.NO.III

The Decree Holder has filed application U/Sec. 50(1) R/w 151 of CPC to permit to bring the legal representative of the deceased Judgment Debtor on record.

2. On the other hand Lrs of Judgment Debtors have filed objection to IA No.III and prays to dismiss the application.

3. Heard both side and perused the materials on record.

4. The following points arises for my consideration.

1) Whether the Decree Holder has made out grounds to allow IA No.III?

2) What order?

5. My findings on the above points are as follows:

Point No. 1 : In the Affirmative

Point No. 2 : As for the following:

REASONS

6. Point No. 1: In the affidavit annexed to the application the Decree Holder stated that, he has obtained a decree against Judgment Debtor in O.S.No. 101/2010 on 20/01/2011 for specific performance of contract under the agreement dated 03/05/1997 directing the defendant to execute the sale deed in favour of the plaintiff. Decree Holder further stated that the decree of specific performance of the contract under the agreement dated 03/05/1997, he has filed the above execution petition. After filing the execution petition, it is learnt that the Judgment Debtor has died on 21/10/2023 without satisfying the decree. On enquiry he came to know that the persons detailed in the annexed application are the legal representative of the deceased Judgment Debtor. The property in possession of the deceased Judgment Debtor has been now occupied by his legal representatives. In law the said legal representatives represents the deceased Judgment Debtor. The legal representatives are now liable and responsible to execute the sale deed in performance of the decree dated 20/01/2011 in favour of decree holder. Hence Decree Holder prays to allow the application.

7. On the other hand the Lrs of Judgment Debtor filed their objection to IA No.III by denying all the averments made in the affidavit annexed to the application. In the objection LRs of Judgment Debtor stated that application filed by the Decree Holder is not maintainable either in law or on facts. The decree passed by the Court is illegal and unwarranted and unenforceable. The trial court would have considered properly before decreeing suit whether the decree for specific performance of contract can be granted or not. The deceased Judgment Debtor has been issued with Saguvali Chit during 2007 on a condition that the land should not be alienated for a period of 25 years. According to it possession has been handed over to the deceased Judgment Debtor, through Saguvali Chit. Earlier as the malki was not fixed the land has not handed over to possession of grantee even though there was grant order of 1982-83. The land grant rule is made it clear that granted land should not be alienated within 15 years of the date of issue of Saguvali Chit and handing over of possession.

8. Judgment Debtor further stated that the court would have perused the Saguvali Chit before passing a decree whether such a decree forbidden by law can be passed even if the parties consent for the same. Even otherwise the sale deed cannot be executed for the land which is not pakkaphoded and within the prohibited period of 25 years mentioned in the Saguvali Chit. The LR., of Judgment Debtor submits that decree schedule land is granted in the name of Sri K.S. Laxmana Gowda for and on behalf of his joint family consisting of his wife and children and the same is improved by the income of other ancestral joint family lands of the deceased Sri K.S. Laxmana Gowda. The LR., of Sri K.S. Laxmana Gowda are not parties the Sale Agreement or Compromise Decree. Hence, the same is not enforceable against them. So, also there was no legal necessity for sale of said land by Sri K.S. Laxmana Gowda. The LR No.1 has right of maintenance over the decree schedule property. As per the law that the LR., of Judgment Debtor Sri K.S. Laxmana Gowda are entitled to the decree schedule property and hence, khata has been made to their name and RTC and other revenue documents are made to their name.

The non alienation clause in Saguvali Chit is not effecting on the right of LRS., of Sri K.S. Laxmana Gowda. Hence, khata was changed to their name. They are not liable to execute Sale Deed in favour Dhr. Neither the Sale Agreement nor the Compromise Decree is binding on them as for both the alleged contracts. The LRs., are not parties and both are forbidden by law and against the public policy and intended to defeat public policy. Hence, the Lrs of Judgment Debtor prays to dismiss the IA No.III.

9. On perusal of the record it reveals that judgment holder died on 21/10/2023 thereafter decree holder has filed present application to bring the L.Rs of judgment holder on record. By this it is very clear that there is no dispute regarding the death of the sole judgment holder. Hence, the presence of Lrs of deceased judgment holder is very much necessary to enable the court effectively and completely to adjudicate the matter in dispute. As per section 50 of CPC where judgment debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the court which passed it to execute the same against the legal

representative of the deceased. In the present case admittedly the JDR died on 21/10/2020, the present application is filed by the decree holder to implead the Lrs on 02/04/2024. The delay in filing application for bringing Lrs of JDR does not applicable to the execution petition. The order XXII rule 12 of CPC it is clearly stated that nothing in rule 3, 4 and 8 shall applied to the proceedings in execution of a decree. If the application is allowed no hardship will be caused to the Lrs of judgment holder. Proposed Lrs are the necessary parties to the petition for adjudicate the matter effectively. Whether the decree can be executed or not cannot be decided at this stage while deciding the interim application. Hence, I proceed to pass the following:

ORDER

IA No.III filed by the Decree Holder to implead legal heirs of Judgment Debtor is hereby allowed.

Case posted for amendment of petition and to file amended petition.

Call on 24/09/2024

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