



Ex. No.41/2022

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
PRINCIPAL J.M.F.C., TARIKERE**

Present :
SRI VAIDYA SHREEKANT,
B.Sc, LL.B.
SENIOR CIVIL JUDGE & PRL. JMFC.,
Tarikere.

DATED: THE 24th DAY OF FEBRUARY 2025

EX. NO.41/2022

DECREE HOLDER/S:

T.K. Prakash S/o T.S.
Krishnamurthy, aged about 44
years, Agriculturist, R/o
Chowdeshwari Colony, Tarikere
Town.

(By Sri. T.L. Prakash, Advocate)

- Vs -

JUDGMENT DEBTOR/S:

T.G. Annaiah S/o late
Govindappa, aged about 65
years, Businessmen, R/o
Venkatarayara Street, Tarikere
Town.

(Absent)

OBJECTOR/S:

1. Krishnappa S/o Borappa,
aged about 63 years,

2. Ashoka S/o Krishnappa,

Both are Agriculturists, R/o 2nd
Cross, Goodshed Road, Tarikere
Town & Taluk.

**(By Smt. H. Bharathi,
Advocate)**



Ex. No.41/2022

ORDER ON APPLICATION FILED UNDER ORDER 21
RULE 58 R/W SEC.151 OF CPC

The Objectors referred above have filed application under Order 21 Rule 58 of CPC praying to set-aside attachment order dated 07.10.2023 in respect of property bearing Assessment No.4127/4018 having old Assessment No.3498/3783 measuring to the extent of 50x34+6/2 situated at Goodshed road, Tarikere and bounded by;

East	:	Road
West	:	House of Mandalkhan Saheb
North	:	House of Applicant
South	:	House of Ranganatha Shetty

2. In the affidavit annexed to the application, objector No.1 deposed that 2nd objector is his son. The application schedule property originally belonged to one Smt. Gowramma who happens to be his aunt (sister of his mother). She had no issues, as such, she has executed a registered Will Deed bearing SR No.11/1990-91 dated 06.06.1990 and bequeathed the application schedule property measuring to the 8x34 feet in favour of 2nd objector and remaining half portion in favour of his sister Smt. Susheelamma. The sister namely Smt. Susheelamma has executed sale deed bearing SR No.649/1990-91 dated 12.10.1990 in his favour. Thereby, Smt. Susheelamma lost her right over the petition schedule property.



Ex. No.41/2022

3. The above said Smt. Susheelamma sold her so many properties fell to her as per the Will referred above. The son of Smt. Susheelamma challenged the alienation made by her by instituting a Civil suit before learned Civil Judge Court and also before this court which are pending consideration. In the last week, some persons had visited the application schedule property and took some photographs and went away from the spot.

4. The very next day, he had been to Municipal Office and seen one advertisement in the notice board which was in English knowledge. He came to know through a person standing near by him that the petition schedule property has been attached as per the orders passed by this court. Then he rushed to the house and verified the documents available with him and confirmed himself that the property belonged to him and his son was attached.

5. It is contended that either the decree holder or Judgment debtor are no way concerned to the application schedule property. In fact, Smt. Susheelamma executed the sale deed in his favour way back in the year 1990 itself and subsequently executed another sale deed with respect to same property in favour of Judgment debtor. She had no right, title, interest or possession to execute the subsequent sale deed in favour of Judgment debtor. Absolutely, she had no title to execute the sale deed in respect of property



Ex. No.41/2022

belonged to the objector No.2 who acquired property through registered Will Deed.

6. The Judgment debtor herein had no right, title, interest and possession over the application schedule property and he purchased the same through the subsequent sale deed. Such being the fact, the decree holder herein intentionally get attachment order in respect of petition schedule property knowing-fully well that the property belongs to objectors. He along with his son is in peaceful possession and enjoyment of the property referred above. The decree holder, Judgment debtor and Smt. Susheelamma played fraud on them in order to grab the petition schedule property. Hence, both of them are apprehending their dispossession from the property by the hands of powerful decree holder. Under such circumstances, if the attachment order is not recalled, they will be put to great loss and hardship and may loose their valuable property. Hence, this application.

7. The application came to be objected by decree holder. The decree holder contended that the petition schedule property originally belonged to one Smt. Gowramma @ Doddamma who bequeathed her property in favour of vendor of the Judgment debtor namely Smt. Susheelamma as per registered Will Deed bearing No.11/1990-91 dated 06.06.1990. The property bearing



Ex. No.41/2022

Assessment No.3497/3782 measuring east – west : 34 feet, north – south : 16 feet (34 x 16 feet) originally belonged to above said Gowramma @ Doddamma. Out of this property an area measuring 34 x 8 feet bequeathed to Susheelamma and remaining portion bequeathed to objector No.2 who was minor at that time.

8. The petition schedule property sold by said Susheelamma in favour of Judgment debtor by means of registered sale deed in SR No.856/1991-92 dated 09.10.1991 and pursuance of the sale deed the katha of the said property was mutated into the name of Judgment debtor. Another property bearing Assessment No.3497/3782 measuring 34x8 was also sold by Susheelamma in favour of objector No.1 Krishnappa by means of registered sale deed bearing document No.649/1990-91 dated 12.10.1990 and in pursuance of the sale deed that katha of the said property mutated into the name of objector No.1 namely Krishnappa.

9. Subsequent to bequeath of property bearing Assessment No.3497/3782 measuring 34 x 8 feet in favour of objector No.2 by means of Will Deed dated 06.06.1990 and in pursuance of the sale deed dated 12.10.1990 executed in favour of objector No.1, the katha of the both properties mutated into the joint names of Krishnappa and Ashok as per Assessment No.4126/4017 measuring 16 x 34



Ex. No.41/2022

feet, hence objector No.1 and 2 have no right, title or interest over the petition schedule property to object the attachment made by this court or for sale of said property. The objector No.1 and 2 are strangers and they have no right to object the same.

10. It is worth to bring notice of this court that children of Susheelamma had filed suit in OS No.13/2011 seeking the relief of declaration that the sale deed dated 09.10.1991 executed by Susheelamma in favour of Judgment debtor does not bind them and also for recovery of possession of property against the present Judgment debtor in respect of petition schedule property. Wherein, the objector No.1 had appeared as GPA Holder of plaintiffs and lead evidence on their behalf. The said suit was dismissed vide Judgment and decree dated 14.11.2019. The objectors being father and son among themselves colluded with each other and are making objections in respect of attached property by filing false and frivolous application. Hence, application is fit to be rejected.

11. In the facts and circumstances of the case, the following points arise for consideration of this Court :

-. POINTS :-

1. Whether the objectors prove that the application schedule property belongs to them?



Ex. No.41/2022

2. Whether they prove that the decree holder cannot attach the said property?
3. What order?

12. On hearing both sides and appreciating the material available on record, I answer the above points as under;

Point No.1: In the Affirmative
Point No.2: In the Affirmative
Point No.3: As per final order
for the following;

REASONS

13. **POINT No.1 AND 2:-** Both these points are taken up together for common discussion to avoid the repetition of facts and circumstances of the case.

The decree holder filed this execution petition for recovery of an amount of Rs.10,00,000/- with interest based on the Judgment and Decree passed in OS No.152/2021. In the said proceedings, he filed an application under Order 21 Rule 64 of CPC praying to attach and sell the property bearing Assessment No.4127/4018 measuring to the extent of 15x34+6/2 in the public auction for satisfaction of the decree referred above. Earlier to this he filed IA No.I under Order 21 Rule 54 of CPC praying to attach the property bearing Assessment No.4127/6018 measuring to the extent of 15x34+6/2.



Ex. No.41/2022

14. Based on the application filed at IA No.I filed by decree holder this court passed an order dated 07.10.2023 for attachment of the property mentioned in IA No.I. Subsequently, he filed IA No.III by mentioning the above referred property as property bearing Assessment No.4127/6018 measuring to the extent of 15x34+6/2. Admittedly, the Assessment numbers of the properties shown in IA No.I and III are different. The argument of decree holder is that it is only typographical error the real number of the property is property bearing Assessment No.4127/4018 measuring to the extent of 15x34+6/2. Let it may be so, let us consider the objections raised by the objectors.

15. The objectors are contending that the petition schedule property totally measuring to the extent of 15x34+6/2 originally belonged to one Gowramma who happens to be maternal aunt of 1st objector. She had no issues and hence executed registered Will Deed dated 06.06.1990 and bequeathed petition schedule property to the extent of 8x34 feet in favour of objector No.2 and remaining half portion in favour of one Susheelamma W/o Chittegowda. The said Susheelamma is none other than his sister. She being the owner to the extent of half share in petition schedule property has executed sale deed in favour of objector No.1 dated 12.10.1990. Thereafter, both objector No.1 and 2 became absolute owners of the petition schedule



Ex. No.41/2022

property and in joint possession and enjoyment of the same.

16. Per contra, the decree holder also admitted in para No.2 of the objection statement that the petition schedule property originally belonged to one Gowramma @ Doddamma who bequeathed her property in favour of vendor of Judgment debtor as per registered Will Deed bearing SR No.11/1990-91 dated 06.06.1990. In para No.3 he admitted that Gowramma @ Doddamma bequeathed half portion in favour of Susheelamma and remaining half portion in favour of objector No.2 who was minor at that time. But he referred the Assessment number of the property as 3497/3782. Whereas, the old Assessment number shown by the objectors is 3498/3483. With this background, let us consider the documents relied upon by both the parties.

17. In fact, the objector No.1 namely Kirshnappa got examined himself as PW.1 but he failed to tender himself for cross-examination. Subsequently, the son of objector No.1 and brother of objector No.2 got examined himself as PW.2, got marked 11 documents in support of his case. Likewise, the decree holder got examined himself as DW.1 and got marked 7 documents.

18. The Ex.P-1 is the certified copy of the Will Deed executed by Smt. Gowramma @ Doddamma dated



Ex. No.41/2022

06.06.1990. In the said document, the Assessment number of the house property is clearly mentioned as 3497/3782. The Ex.P3 is the certified copy of the sale deed alleged to be executed by Susheelamma in favour of Krishnappa, the objector No.1 herein. In the said sale deed also, the property under the sale is clearly mentioned as 3497/3782. It means, the property bearing assessment number 3497/3782 to the extent of half share bequeathed to objector No.2 and remaining half portion was bequeathed to the vendor of objector No.1. But in the application filed under Order 21 Rule 58, they clearly mentioned the old assessment number as 3498/3783, which is not at all either subject matter of the Will Deed or the sale deed referred above. It is crystal clear that the objectors are falsely claiming to be the owners of property bearing No.3498/3783.

19. Furthermore, Ex.P-6 is the certified copy of assessment for the year 2001-02 and it is filed by the objectors themselves. In the said document also, name of Krishnappa and Ashok the objectors herein is written against the property bearing No.4126/4017, whereas, name of Jdr is appearing against the property bearing No.4127/4018 which alleged to be the new number of property bearing assessment No.3498/3783. Viewed from any angle, there is no merit in the application filed by the objectors. The documents produced by themselves would



Ex. No.41/2022

establish that they are the owners of property bearing No.4126/4017, the old number of which is 3497/3782, but they falsely claiming to be the owners of property bearing assessment No.4127/4018 old No.3498/3783. Hence, I am of the opinion that there is no merit in the application filed by the objectors and it deserves to be rejected with exemplary cost.

20. Admittedly, this court already passed an order for attachment of property bearing No.4127/6018. As discussed above, at IA No.I property number is mentioned as 4127/6018 and IA No.3 filed under order 21 Rule 64 the property number is mentioned as 4127/4018. The decree holder also failed to mention proper number of the property to be attached and sold in public auction.

21. Furthermore, the objectors filed the information statement given by TMC, Tarikere, wherein it has been clearly mentioned that the assessment numbers 4127/6018 are not in tally. The information is reiterated for better understanding thus;

ಕ್ರ.ಸಂ.	ಕೋರಲಾದ ಮಾಹಿತಿ	ನೀಡಲಾದ ಉತ್ತರ
01	ಆಗಿರುವ ಅಸೆಸ್ ಮೆಂಟ್ ನಂ:4127/6018 ಖಾಲಿ ನಿವೇಶನದ ದಾಖಲೆಗಳು ಮತ್ತು ಅಸೆಸ್ ಮೆಂಟ್ ನಕಲು ನ್ಯಾಯಾಲಯದ ಉದ್ದೇಶಕ್ಕೆ ನೀಡುವಂತೆ ಕೋರಿರುವ ಬಗ್ಗೆ.	ಪರಿಶೀಲಿಸಲಾಗಿ, ನೀವು ಕೋರಿರುವಂತೆ ಅಸೆಸ್ ಮೆಂಟ್ ನಂ:4127-6018 ರ ಸ್ವತ್ತಿನ ಅಸೆಸ್ ಮೆಂಟ್ ನಂಬರ್ ಗಳು ಒಂದಕ್ಕೊಂದು ತಾಳೆ ಇರುವುದಿಲ್ಲ. ಸ್ಪಷ್ಟವಾದ/ ನಿಖರವಾದ ಮಾಹಿತಿಯನ್ನು ನೀಡಿದಲ್ಲಿ ಪರಿಶೀಲಿಸಿ ಮುಂದಿನ ಕ್ರಮ ವಹಿಸಲಾಗುವುದು.



Ex. No.41/2022

22. In the facts and circumstances referred above, I am of the opinion that unless and until recent katha that too E-katha is furnished and undisputed title of the Judgment debtor is established the property cannot be attached and sold in public auction. The claim of the decree holder may be considered, if relevant documents are furnished. At this stage, there are no sufficient documents to establish that either the objectors herein or Judgment debtor is the owner of the petition schedule property. **Accordingly, I answer Point No.1 and 2 in Affirmative.**

23. **POINT No.3:-** For the reasons stated and findings given on point No.1 and 2, I proceed to pass the following :

ORDER

I.A.No.IV filed by the objectors under Order 21 Rule 58 R/w Sec.151 of CPC is hereby rejected with exemplary costs of Rs.10,000/-.

In the facts and circumstances of the case, IA No.I and III filed by the decree holder are also rejected and order of attachment of property bearing 4127/6018 is hereby recalled.

(Directly dictated to the stenographer, directly computerized by her, corrected and then pronounced by me in the open court on this the 24th day February, 2025.)

Sd/-
(VAIDYA SHREEKANT)
SENIOR CIVIL JUDGE & PRL. JMFC.,
TARIKERE.



Ex. No.41/2022

A N N E X U R E**List of witnesses examined for the Decree Holder/s:**

PW.1 : Krishnappa
PW.2 : Manjunatha

List of witnesses examined for the Judgment Debtor/s:

DW.1 : T.K. Prakash

List of documents marked for the Decree Holder/s:

Ex.P.1 : GPA
Ex.P.2 : C/c of Will Deed
Ex.P.3 : C/c of Sale Deed
Ex.P.4 : C/c of Order-sheet in Misc No.3/2023
Ex.P.5 : C/c of Petition in Misc No.3/2023
Ex.P.6 : C/c of Assessment List of Buildings and
Lands liable to taxation
Ex.P.7 : C/c of Information dated 03.07.2024
Ex.P.8-9 : C/copies of Uttar
Ex.P.10 : C/c of Complaint in OS No.152/2021
Ex.P.11 : C/c Chief-examination in OS No.152/2021
Ex.P.12 : C/c of Legal Notice dated 12.11.2021

List of documents marked for the Judgment Debtor/s:

Ex.D.1 : C/c of Judgment in OS No.13/2011
Ex.D.2 : C/c of Decree in OS No.13/2011
Ex.D.3 : C/c of Sale Deed
Ex.D.4-6 : C/c of Assessment List of Buildings and
Lands liable to taxations
Ex.D.7 : Encumbrance Certificate

SD/-
**SENIOR CIVIL JUDGE & PRL. JMFC.,
TARIKERE.**