

KADG220002322020



**IN THE COURT OF THE PRL. CIVIL JUDGE &
J.M.F.C., CHANNAGIRI**

-: PRESENT :-

**Shri. Siddalingayya B. Gangadharamath,
B.Com. LL.B. (Spl),
Prl. Civil Judge & J.M.F.C.,
Channagiri.**

Dated: This the 19th Day of April 2025

Ex.No. 4/2020

Decree Holder : Sri. H.M.Puttaswamy and others

V/s

Judgment Debtors : Sri. M.D.Kenchappa and others

I.A.NO.IV

Applicant/ Judgment Debtors : Sri. M.D.Kenchappa and
others

V/s

Opponents/Decree Holders : Sri. H.M.Puttaswamy and
others

ORDER ON IA-IV

The JDR No.1(a) and (b) filed the instant application
U/sec 137, 148, 153 R/w sec 151 of CPC seeking

permission to put all the questions regarding misrepresentation of plaintiff in obtaining the decree. The application has been filed at the stage of cross examination of PW-1.

2. The Sum and Substance of the affidavit as under:

The Judgment Debtor No.1(a) has filed the supporting affidavit. Wherein he has stated that, the counsel for decree holder has objected for the cross examination of PW-1 on the points of fraud, misrepresentation that, was done by the decree holder in getting the Judgment and decree, in his favour. The very grounds have been raised in the objection statement of the judgment debtors and touching upon the relating factual aspects in the cross examination of PW-1 is very much essential. The judgment debtors have also claimed that, the question of fraud, misrepresentation can be raised even at the collateral proceedings. Therefore, he has submitted that, the submission of the counsel for decree holders as the executing court cannot go beyond the decree is not applicable, in view of fraud and misrepresentation case set up by the judgment debtors. Thus, the judgment debtors have prayed to consider their submissions and to permit them to put the question in that regard to the PW-1 during the course of cross examination. Accordingly, they have prayed to allow their application.

3. Statement of objections:-

The decree holders have opposed the application with the specific contentions that, judgment debtors cannot dispute the very execution proceedings on the basis of description of the property, since the said point had already been settled at undisputed point of time. The executing court has no authority to go beyond the decree and consider the alleged objections raised by the judgment debtors as regards description and identity of decreetal property. If the prayer is considered, it would amount to a de novo trial of the original suit. By these set of objections, that decree holders have prayed to reject the application.

4. Having heard the learned counsels for decree holders and the judgment debtors, the following points have been formulated for my consideration.

POINTS

1. Whether the Judgment debtors have made out grounds to consider their application ?

2. What order ?

5. My answers to the above points are as under ;

POINTS

Point No.1 : In the Negative,

Point No.2 : As per the final order

for the following ;

:R E A S O N S:

6. Point No.1 : Admittedly , the decree holders have filed this petition for the alleged violation of the decree passed in OS No. 419/1975. In the body of the petition, the decree holders have stated that, their father Puttaswamy had filed a suit against M.D.Kenchappa and which was decreed on 06.06.1978. Thereby, the necessary order for permanent injunction restraining the defendant was granted. The original decree holder and judgment debtor are no more, but the same is executable and obeyable by respective legal representatives. The decree holders have stated that, the judgment debtors with their lot of men support tried to interfere in the possession of petition schedule property in defiance of Judgment and Decree. Therefore, the decree holders pray to initiate necessary recourses under the code of civil procedure.

7. The judgment debtors have put their appearance and filed the statement of objection. Wherein, they have contended that, they were not parties to the OS No. 419/1975 and as such are unaware of the said proceedings. The judgment debtors have contended that, as per their knowledge, the decree holders are not in possession of the property bearing Sy No. 84/10P-2, measuring 3 Acre 10 Guntas and within the boundaries earmarked in the petition schedule. The judgment debtors have contended that, the property bearing Sy No. 84 of

Benkikere village is measuring more than 115.36 Acres including 54.10 Acres of phoot 'A' Kharab Land and it is yet to be sub divided. Under such circumstances, the decree holders cannot lay their claim in the petition schedule property.

8. Thus, the judgment debtors have disputed the very location and the existence of the property. The judgment debtors have also contended that, one Chandrappa S/o Rangappa was in possession of the property bearing Sy No. 84/7, measuring 3 Acre 30 Guntas, by virtue of grant order of Tahasildar, Channagiri. In recent past, the name of his wife Mallamma came to be mutated in the revenue records vide MRH 50/2019-20. The decree holders file the petition without any cause and dragged the judgment debtors, in to the litigation unnecessarily. The judgment debtors have also contended that, Puttaswamy and his father were holding the office of Shanbhigh and in that process they got up the documents on coming into force of Inam Abolition Act, 1961, by misusing his official capacity. The decree holder never cultivated the property, ever resided in the village and they are at far away places. The legal representatives of Chandrappa, Mallamma are necessary parties to this petition. By these set of objections, the judgment debtors have prayed to reject the petition.

9. Before taking note of the validity of the application, it is very strange to add that, the judgment debtors resorted the application on hand in terms of Sec 137 of CPC, 147 of CPC, 148 of CPC and 153 of CPC without proper remedies available thereunder. As per the Sec. 137 of CPC, the procedure for recording of evidence and use of language is criteria. The Sec. 148 of CPC deals with enlargement of time and the Sec. 153 of CPC refers the General Powers of the Court to amend any defect or error in any proceeding of a suit. The aforesaid provisions never ever spelt out the procedure or the power of the courts to allow the party to put the question beyond the scope of the any proceedings or to allow the party to contest the execution petition on the ground of alleged fraud, misrepresentation. However, the judgment debtors have filed application sheltering their claim U/sec. 137, 148, 153 of Code of Civil Procedure and the same is absolutely without any scope.

10. The judgment debtors have sought for permission to cross examine the PW-1 on the alleged grounds raised in the objections statement, with relation to alleged fraud, misrepresentation on the part of decree holder. It is in this regard, I would take note the statement of objections of judgment debtors. The judgment debtors at one breath have stated that, the petition schedule property is not with the possession of decree holders and it is in the possession of one Chandrappa S/o Rangappa and his legal

representatives. The another breath they have stated that, the judgment debtors father late Puttaswamy had played a fraud, misrepresentation and created a documents at the time of coming into force of Inam Abolition Act. The judgment debtors have also contested the petition on the ground of residence of decree holders as it is far away from petition schedule property and also non joinder of necessary parties.

11. Having taken note of the aforesaid kinds of objections raised by the judgment debtors, which infact permissible interms of Sec. 47 of Code of Civil Procedure, the judgment debtors have not stated that, what kind of fraudulent act done by the decree holders in getting the Judgment and Decree. The judgment debtors have concentrated more upon the possession of the petition schedule property and set up a case that, petition schedule property is with the legal representatives of Chandrappa and Mallamma. In this regard, I would like to take note of Sec. 47 of the Code of Civil Procedure, which relates to determination of all question arising between the parties to the suit or their legal representative, in which the decree was passed relating to the execution, discharge or satisfaction of the decree. This provision qualified with Sub Clause (3) and it denotes that, the questions as to the representative of the party is determinable issue interms of Sec 47(1) of the Code of Civil Procedure. The Sub clause 3(b) of Sec 47 of the Code of Civil Procedure, relates to the

questions of delivery of possession and it mainly connects to purchaser or his legal representative. The present judgment debtors have not raised any question as regards legal heirship or representative aspect is concerned. Even they have not raised any kind of question relating to delivery of possession on the ground of purchase of the property. Therefore, the objection raised by the judgment debtors is not at all comes within the purview of Sec. 47 of the Code of Civil procedure.

12. The judgment debtors have raised concern regarding the possession, identity of the petition schedule property. The same is factual aspect and was settled by this court in original suit bearing OS No. 419/1975. The same cannot be the subject matter of this execution petition. The other aspect that has been raised by the judgment debtors is fraudulent act of Puttaswamy and creation of documents. Necessarily, those aspects are also revolving around the factual background and in that regard, I would take note of defence set out by the original defendant in OS No. 419/1975. In the said suit the defendant has contended in this fashion , “ defendant is in possession and enjoyment of the suit property and is raising a crop every year. He has invested huge sums of money over the suit land. Plaintiff has conveyed the suit land by a fraudulent sale deed to One Channabasappa without possession and the said purchaser has also joined hand with the plaintiff in order to have wrongful gain.”

13. The very defence set out by the ancestor of judgment debtors was negated by this court by confirming the possession of plaintiff and interference of defendant and decreed the suit on 06.06.1978. Therefore, the very same factual aspect which are settled or which have not been questioned before the competent authority cannot be rejuvenated in the execution proceedings. The same would amounts to travel beyond the decree.

It is in this connection I would like to refer the decision of the **Honorable Supreme Court of India, reported in (2003) 8 SCC 289, in the matter between Ravinder Kaur V/s Ashok Kumar and another .**

“ 20. This opinion of the High Court, in our considered view, is wholly erroneous for more than one reason. The objection that the learned Judge referred to in the impugned order raised by the respondent herein was in regard to the correctness of the site plan. As noted earlier, this very issue was specifically raised in the original ejectment proceedings and was held against the respondents based mainly on the admission of the first respondent which we have already extracted hereinabove. At the cost of repetition, we must restate that this question of identity of the property was never again raised in the appeal before the Appellate Authority, in the revision before the revisional authority, namely, the

High Court or in the SLP before this Court. In such circumstances, we fail to understand how this very issue can be reagitated in the execution proceeding by the tenants. It is also to be noticed that the executing court has rightly observed that reopening of this issue would amount to asking that court to go behind the decree which is impermissible in law. We must note, this finding of the executing court is not even noticed by the High Court in the impugned order. The High Court also did not take into consideration the reasoning of the Coordinate Bench of the same High Court in the dismissal order made in CRP No. 5175 of 2002 on 29-10-2002 which while rejecting the similar contention of the respondents had specifically observed that the attempt of the tenants was with a view to delay their ejection. In such a factual background, we think the impugned judgment is wholly erroneous having no legal or factual basis to sustain it. We also must notice that the High Court in the impugned order has made an observation which in effect, in our opinion, makes the execution proceedings liable to be dismissed. The said observation is as follows:

"In the present case, it is proved on the record that the shop regarding which the decree-holder was seeking possession during execution proceedings was not the one regarding which the ejection order had been

passed by the Rent Controller. Neither the description had tallied nor the boundaries tallied.”

14. The aforementioned dictum of the Apex Court of India clarifies the situation that, where the objection as regards identification of the property is raised in the execution proceedings, if such objections are entertained the same would amounts to re-trail of the factual aspects which are settled in the original proceedings. The same hit by the principle that the execution court cannot go beyond the decree. In the case on hand also, the judgment debtors raised their concern about the possession , description and the identity of the property, which has been already dealt in original proceedings. Therefore, the prayer that has been made by the judgment debtors for permission to put the question to the PW-1 in accordance with their objection statement is not permissible. If the permission is accorded it would amounts to travel beyond the decree or re-trial. Under such circumstances, the very prayer of judgment debtors under the current application is absolutely not acceptable in the eye of law. Thus, the judgment debtors are not entitled the reliefs as sought under this application. Accordingly, the Point No.1 held in the **Negative**.

15. Point No.2:- For the forgoing reasons, the following:

ORDER

**IA-IV filed U/sec 137, 148, 153 R/w
Sec. 151 of the Code of Civil Procedure,
by the Judgment Debtors is hereby
rejected.**

No order as to costs.

(Dictated to the typist and corrected and then pronounced
by me in the open court on this **19th Day of April, 2025.**)

Sd/-
(Siddalingayya B. Gangadharamath)
Prl. Civil Judge & J.M.F.C.,
Channagiri.

Date: 19.04.2025,
Place: Channagiri.