

**THE COURT OF THE II ADDL CIVIL JUDGE &
JMFC, CHANNAGIRI.**

Dated: 24th Day of March 2025

PRESENT: **SMT. MAHALAKSHMI G M.A., L.L.B.,
II Addl Civil Judge & JMFC, Channagiri.
Ex.41/2021**

BETWEEN :

Ujjinappa and others

.....JDR's

AND

Channabasamma and others

.....DHR's

ORDER ON I.A. V

This application filed by the JDR No.3 seeking order of the court to appoint the court commissioner, i.e., ADLR, Channagiri as court commissioner to show the exact location of the suit schedule property of Sy.No.62/9 in Sy.No.62 of the Sarathi village.

2. In support of the application he had sworn an affidavit stating that he specifically disputed the exact location, identity of the suit schedule property in entry Sy.No.62. If the suit property is measured and its location is fixed the disputes will come to end and it is necessary to locate the exact location of the Sy.No.62/9 of Sarathi Village as per the grant sketch which will help the court to decide the matter in dispute. Further to

establish that they have not violated the order of the court. Thus, prays to allow the application.

3. The L/C/DHR filed statement of objection to the said application Wherein he contended that the O S No. 187/2016 suit filed by her for the relief of permanent injunction in respect of suit schedule property same is dismissed by this court and the DHR preferred appeal before Hon'ble Senior Civil Judge and JMFC Court, Channagiri as per RA No.18/2020 wherein the appellant court set aside the judgment and decree passed by this court. Also restrain the JDR's from interfering with the DHR peaceful possession of the suit property. Hence, the question of find out the exact location and identity of the property by ADLR Channagiri does not arise at all. After perusal of the documentary evidence as well as oral evidence the appellant court was pleased to grant the permanent injunction against the JDR's. In the execution proceedings the JDR's have no right to take such defence. The identification of the property is already proved by the DHR in the original suit. Hence the JDR's have no right to measure and find out the exact location. Thus, the question of appointing ADLR, Channagiri as court commissioner to find out the exact location of schedule property does not arise at all. Moreover, the JDR have not challenged the judgment and decree passed by the First Appellant court in RA No. 18/2020 till date. Thus the same is came to finality. Thus, prays to reject the application.

4. Heard from both counsels. Perused the affidavit and the statement of objection.

5. On perusal of the same, the following point would arise for determination:

POINTS

1. Whether the JDR made out grounds to appoint the court Commissioner in the the present petition to locate the suit schedule property?

2. What or decree?

6. My answers to the above points as under.

POINTS

Point No.1 : In the Negative

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

REASONS

7. Point No. 1 :- Admittedly the present execution petition arises out of the judgment and decree passed by the First Appellant court in RA No. 18/2020. The DHR sought the attachment and sale of movable of the JDRS' and arrest of JDR's, attachment and sale of schedule property of JDR's and for police protection against the JDR's with respect to suit property. Admittedly, the original suit filed before this court vide OS No.187/2016 is dismissed by this court. Against the said judgment and decree the plaintiff preferred appeal vide RA No.18/2020 wherein the appellant court was set aside the judgment

and decree passed by this court and allowed the appeal preferred by the plaintiff. By virtue of appellant order the present execution petition filed before this court by the DHR seeking the above mentioned relief against the JDR's. The present execution petition filed by the DHR by virtue of judgment and decree passed in RA No.18/2020 by the appellant court and the nature of relief sought in the present case is for permanent injunction. Having taken note of the previous proceedings the DHR has already proved her possession in and over the suit schedule property before the court. Hence, the present application seeking the order of the court to appointment of court commissioner is beyond the scope of this this court and the nature of relief sought in the case preferred by the DHR. When the suit is for permanent injunction it is for the petitioner /plaintiff to establish her possession. No commissioner would to appoint to ascertain possession in a suit for injunction. The suit schedule property shall be identifiable and it should be definite. In a suit for permanent injunction the both parties cannot seek for appointment of court commissioner to identify or demarcate the property. Thus, appointing the court commissioner in the present petition is beyond the scope of nature of suit which would amount to collection of evidence. This court is being execution court cannot go beyond the decree. Thus, the JDR have not made out any grounds to appoint court commissioner to find out location of the suit property in

the present suit. Thus, this court answered the **point No.1 in the negative.**

8. **Point No.2:** Hence, the following order:

ORDER

**The IA No.V filed by the JDR
U/o 26 Rule 9 of CPC., is hereby
dismissed.**

For arguments

Call on:29.03.2025

Sd/-

**II Addl Civil Judge And Jmfc.,
Channagiri.**

