

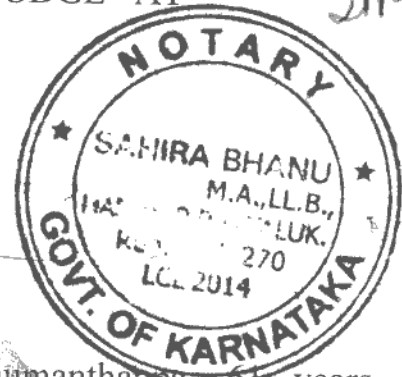
IN THE COURT OF THE SENIOR CIVIL JUDGE AT
HARIHAR

EX NO 71 /2009

Decree Holder :- Halamma

V/S

Judgment debtors :- Yallamma and others.



AFFIDAVIT

I, Halamma W/o late Kannavara Hanumanthappa, 61 years, agriculturist, R/o Doddibeedi, Harihar City, do here by solemnly swear on oath in the name of God and state as follows :-

1. That I am the decree holder in the above case and I know the facts of the case fully. That there are two objectors by name Ganesh.B.S S/o B.G.Shivaraj and M.G.Javeed S/o M.G.Abdul Sathar. The objector M.G.Javeed filed his application under order 21 rules 99 to 101 of CPC and under section 47, 151 of CPC, on 22-6-2013 and prayed to pass an order to recall the delivery warrant or to set aside the proceedings of delivery warrant with respect to the EP schedule item No 4 property. That I filed my objections for the said application of Sri.M.G.Javeed on 24-8-2013. That the objector Ganesh.B.S filed his application on 30-1-2013 under order 21 Rules 99 to 101 and under sections 47, 151 of CPC and prayed to pass an order to recall the delivery warrant issued in the above case with respect to the EP schedule item No 2 property measuring 1 acre 5 gunta out of 4 acre 5 gunta in SY No 32/P of Harlapura Village. That I filed my objections for the said application of said objector Ganesh.B.S on 16-2-2013.

2. That I am giving this evidence in examination in chief in the form No affidavit evidence, for the above said 2 applications of the two objectors.

3. The averments made by me in the objections dated 16-2-2013 for the application of the objector Ganesh.B.S and the averments made by me in my objections dated 24-8-2013 for the application of the objector M.G.Javeed are true and correct and the said objections be read as part and parcel of this examination in chief evidence.

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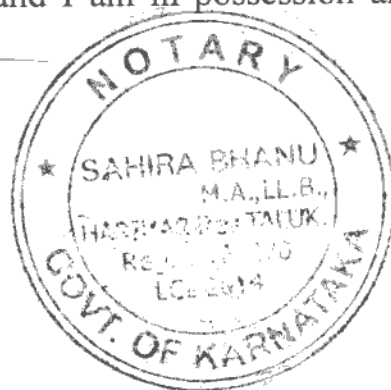
4. That I filed the suit for partition and separate possession of the suit schedule properties, in OS 77/1995 before the Hon'ble civil judge court, at ^{Davanagere} ~~Harihar~~ and I filed the said suit on 22-4-1995. The said suit was partly decreed on 26-5-2000 and the Hon'ble civil judge court Davanagere not decreed my suit with respect to the suit schedule item N 8 property measuring 4 acre 10 gunta in SY No 63/3 of Harihar Kasaba Village. Then I filed the 2nd appeal before the Hon'ble High Court of Karnataka as against the refusal of the reliefs for the said suit schedule item No 8 property in RFA 725/2000 and the said appeal was allowed by the Hon'ble High court of Karnataka and granted the reliefs to me for the suit schedule item No 8 also.

5. Then I filed the FDP petition in FDP 18/2002 before this Hon'ble court and this Hon'ble court allowed the said FDP 18/2002 on 12-1-2004 and in the said FDP 18/2002, the shares which are determined in the preliminary decree in OS 77/1995, are determined and the final decree was drawn on stamp paper for the properties allotted to my share except the suit schedule item No 8 property.

6. Then I filed the above said execution petition before this Hon'ble court on 21-12-2009, and prayed for the delivery of possession of the properties allotted to my share in OS 77/1995, FDP 18/2002.

7. In the above said execution petition, this Hon'ble court has duly delivered the possession of the EP Schedule item No 2 property as per law and the said proceedings of the delivery warrant for the said property is available in the file of this Hon'ble court in this execution petition. Similarly the share of the property allotted to me in the EP schedule item No 4 property is delivered to me and I am in possession and enjoyment of the properties delivered to me.

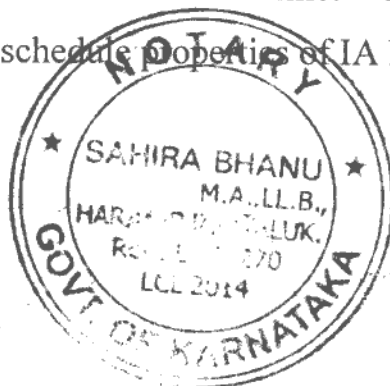
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8. That I took the possession of the properties allotted to me in this execution petition, as per the terms of the preliminary decree in OS 77/1995 and in FDP 18/2002 in this execution petition. The objectors are having no rights, titles, interests, possession in the properties in Sy No 32/P of Harlapura Village and in the property bearing No 822, of J-division, Harihar City. The objectors have filed the false applications with respect to the properties delivered to me only to cause wrongful loss to me and to have a wrongful gain to them.

9. The IA No 5 filed by the objector Ganesh.B.S is not maintainable both under law and on facts. The EP schedule properties are duly delivered to the decree holder by the Hon'ble court, as per the orders passed by the Hon'ble court, already. The execution of the delivery warrant, orders of the Hon'ble court, may kindly be read as part and parcel of these objections. The EP schedule item No-2 property is measuring 1 acre 5 gunta, out of 4 acre 5 gunta in Sy No 32/P of Harlapura Village, Harihar Taluk. The said 4 acre 5 gunta of land in Sy No 32/P of Harlapura village, was the item No-2 land in the suit in OS 77/1995. The said suit in OS 77/1995, was filed on 22-4-1995 and the said suit was decreed on 26-5-2000. The decree holder filed FDP petition in FDP 18/2002 before this Hon'ble court and the final decree was passed by this Hon'ble court. Then the decree holder filed the above said execution petition before this Hon'ble court, for the delivery of her shares of properties and the said shares of the decree holder are already delivered to the decree holder, as per the proceedings, orders passed by this Hon'ble court. Hence the present IA No 5 is not maintainable under law. The decree holder has also filed a memo to the Hon'ble court, for having taking the possession of the EP schedule properties, as per the delivery warrants issued by the Hon'ble court. Hence the present IA No 5 is not maintainable under law and it is liable to be dismissed in limine. The allegations of the applicant / objector that the schedule properties of IA No 5 are situated in 1

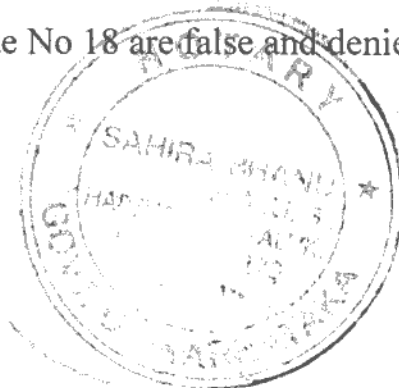


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acre 5 gunta of land of EP schedule item No 2 property are false and denied. The application schedule properties are not situated within the boundaries of the EP schedule item No 2 property. The decree holder is the absolute owner in possession of the EP schedule item No 2 property. The applicant / objector to IA No 5 is having no rights, titles, interests, possession of any part of the EP schedule item No 2 property or in the application schedule properties. Hence the IA No 5 is not maintainable under law. The allegations in the affidavit of IA No 5 that the applicant / objector is the owner in possession of the application schedule properties, that the application schedule properties are in the name of the applicant / objector, that the applicant / objector purchased the application schedule properties by registered sale deed bearing Sr,No 496/09-2010 on 2-6-2009, that the said application schedule properties are the site properties formed in Sy,No 32/P of Harlapura village, that the father of the applicant and Syed Sabjan Sab, Syed Suban Sab, Syed Amanulla purchased 1 acre 20 gunta of land in sy,No 32/P of Harlapura village by registered sale deed bearing Sr,No 1034/80-81 on 26-8-1980, that their name was entered in the revenue records by mutation entry in MR 3/80-81, that the said land alienated on 21-6-1985 in ALNSR 433/84-85 and on that reasons the mutation in MR 9/86-87 are effected in the RTC, that the said land was converted as site properties, that the said site properties are coming within the city limits of Harihar City Municipality, that 33 sites were formed in the said 1 acre 20 gunta and the said 1 acre 20 gunta of land was bounded by East : - remaining land in the same Survey number, West : - Land of Mysore Kirloskar Education trust, North : - Land of Beerappa S/o Kare Govindappa, South : - Land of Nagappa, that it was sold to Baba Sab and others are false and denied. The further allegations in the affidavit to IA No 5 that the applicant / objector is in actual possession and enjoyment of the application schedule properties on the basis of the alleged registered sale deed, that the applicant sold the site No 17, 21, 22 and retained site No 18 are false and denied. It is true that the

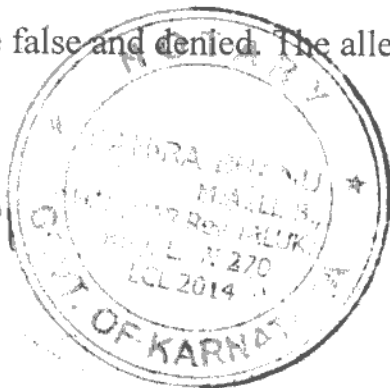
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applicant was not a party in OS 77/95, FDP 18/02 and in this execution case. The alleged purchasers of 1 acre 20 gunta of land in Sy, No 32/P were also not the parties in the said cases. The said persons are having no rights, titles, interests, possession in the above said 4 acre 6 gunta of land in Sy, NO 32/P of Harlapura village. Hence they were not the parties to the said case. The allegations in the affidavit that the DHR suppressed material facts and filed false suit against the JDR's with respect to the EP schedule item No 2 property by colluding with the JDR's, that the DHR obtained a fraudulent decree in the above cases with respect to the said property, that the applicant and other persons are entitled for notice in the above said case while delivering the possession of the EP schedule item No 2 property are false and denied. The allegations in the affidavit that on the basis of the alleged sale deed dated 26-8-1980 the names of the purchasers was entered in the RTC, mutation records, that the said land was not a agricultural land, that the DHR and JDR's were not in possession and enjoyment of 4 acre 5 gunta of land in Sy, No 32/P of Harlapura village are false and denied. The allegations in the affidavit that the DHR trespassed in the application schedule property, that she approoted the boundaries stones on the application schedule properties, that the applicant resisted such actions of the DHR, that the DHR told to the objector for having obtain decree, etc are false and denied. The allegations in the affidavit that the applicant is in lawful possession and enjoyment of the application schedule properties in Sy, NO 32/P within the boundaries of item NO 2 of the EP schedule property are false and denied. The allegations in the affidavit that the judgment, decree, orders passed in the above said cases in OS 77/95, FDP 18/02 and in this execution case are not binding on the applicant are false and denied. The allegations in the affidavit to IA No 5 that the DHR is not entitled for possession of the EP schedule item NO 2 property, that the proceedings, orders passed for the delivery of the said property to DHR by this Hon'ble court is not binding on the applicant and others are false and denied. The allegations in the affidavit

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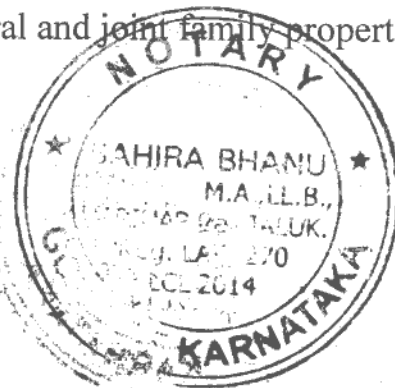


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to IA No 5 that the applicant is entitled to recall the delivery warrant, to set aside the proceedings carried out in the above case with respect to the EP schedule item NO 2 property, to seek orders to set aside the orders passed by this Hon'ble court etc are false and denied. The applicant / objector has filed a false IA No 5 with false allegations in the affidavit to IA No 5. The IA No 5 is devoid of any merits and it is liable to be dismissed in limine. The applicant is not entitled for the reliefs as claimed in IA No 5 and IA No 5 is liable to be dismissed with costs. The EP schedule item NO 2 property is agricultural land, in possession and enjoyment of the decree holder as its absolute owner.

10. This applicant/ objector M.G.Javeed has already filed IA No-3 on 29-6-2012 under order 21 rule 58, 97 of CPC and under section 151 CPC in this case against this decree holder. The objector filed IA No-4 on 21-7-2012. The objector also filed his objections to the main execution petition in this case on 21-7-2012. The decree holder has filed her objections to the said IA No-3 on 4-8-2012 and she also filed objections to IA No-4 on 4-8-2012. The decree holder also filed counter to the objections of the objector M.G.Javeed on 4-8-2012. The objections filed by the decree holder to IA No-3, 4 and counter to the objections of the said objector filed by the decree holder may kindly be read as part and parcel of these objections. The objector M.G.Javeed also filed a Civil Suit in OS 117/2012 before the Hon'ble Civil Judge Court Harihar in the month of June 2012 and sought the relief of permanent injunction order for not to interfere with his alleged possession of the schedule property in the said suit. This decree holder filed her written statement in the said suit on 3-12-2012 along with 13 documents. The said written statement filed by this decree holder in OS 117/2012 be read as part and parcel of these objections. Beerappa, Nagappa, Basappa, Kenchappa, all are sons of Kannavara Siddappa of Doddibeedi, Harihar Town, were divided their ancestral and joint family properties by registered

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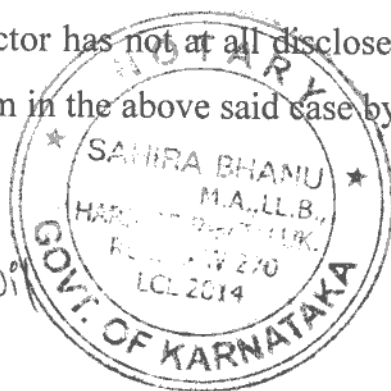
partition deed dated 22-8-1974, SR No 1621/1974-75. In the said partition deed the above said Beerappa S/o Kannavara Siddappa was the 1st hissadar. In the said partition deed, the site property bearing No 34/671, in new Harlapura Badawane, J-division, Harihar Town, fell to the share of the said Beerappa S/o Kannavara Siddappa and the said property measures East-West:- 60 feet, North-South:- 40 feet and bounded by East:- Conservancy, West:- Main road, North:- Site No 35 wherein now Chowdamma Temple is situated, south : - Site No 33, was allotted to the share of the said Beerappa S/o Kannavara Siddappa, along with other properties. The said property is the one of the property in the suit filed by this decree holder in OS 77/1995. The above said Beerappa S/o Kannavara Siddappa died by leaving his 3 sons by name Kenchappa, Hanumanthappa, Basavaraja and 7 daughters by name Nagamma, Kannamma, Hanumakka, Rathnamma, Rudramma, Siddamma and Dyamkka. The above said Hanumanthappa S/o Beerappa was the husband of this decree holder and he died in 1980 by leaving the decree holder as his legal heir, successor, representative to inherit the shares of her husband in the properties which are came to the above said Beerappa S/o Kannavara Siddappa in the above said partition deed dated 22-8-1974. This decree holder filed the suit in OS 77/95 before the Hon'ble Senior Civil judge court, Davanagere on 22-4-1995 and sought the relief of partition and separate possession of her share in the properties described in the schedule of the said suit OS 77/95. The alleged sale deed dated 23-6-1995, Sr, No 644/95-96 from Beerappa S/o Kannavara Siddappa in favour of Ananthraj Patel came in to existence after filling the above suit in OS 77/95, that the said Beerappa was not the absolute owner of the property involved in the alleged sale deed, that the said property was not his self acquired property, that the said property was the ancestral property of the said Beerappa, that the said Beerappa had no rights to execute the said alleged sale deed and hence the alleged purchaser Ananthraj Patel derived no valid title to the said property. Consequently the said Ananthraj Patel had no rights to sell the property involved in the said alleged sale deed to any other persons.

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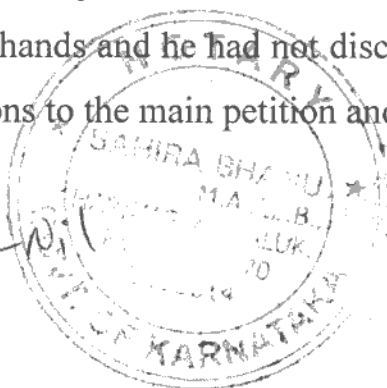
including the objector M.G.Javeed. Hence the alleged sale deed dated 28-3-1996, in favor of the objector is not a valid title deed and it is not conveyed a valid right, title, interest, possession of any property involved in the said alleged sale deed. The above said alleged sale deeds dated 28-3-1996 and 23-6-1995 are not binding on the objector and her rights, titles, interests to claim the share in the said property. Hence the taking of the steps by this decree holder like filling of the suit in OS 77/05, filling of the FDP in FDP 18/2002, taking of the possession of the objection schedule property through the process of court of this Hon'ble court are in accordance with law. The IA No 7 schedule property is one of the properties involved in OS 77/95. The said suit in OS 77/95 was decreed by the Hon'ble Senior Civil judge court, Davanagere on 26-5-2000. In view of the establishment of the senior Civil Judge, at Harihar in 2002, the decree holder filed the FDP petition in FDP 18/2002 before this Hon'ble court and the final decree is passed by this Hon'ble court on 21-9-2005. Then this decree holder filed execution petition in EX 71/09 before this Hon'ble court. In this execution case, the decree holder took the possession of her share of property in the IA No 7 application schedule property through the process of this Hon'ble court, by executing the delivery warrant on 25-6-2012 at about 3=30 PM and this decree holder is in possession and enjoyment of the vacant site property measuring 18.23 X 3.35 meters which is fully described in the schedule of this objections. The decree holder is the absolute owner in possession of the objections schedule property. The objector M.G.Javeed is having no rights, title, interests in the objections schedule property. The allegations in the affidavit in support of IA No 7 that the objector is the owner in possession of the objections schedule property, that he is entitled for an order of the Hon'ble court in his favor under order 21 Rule 99 to 101 of CPC and under Section 47, 151 of CPC and also for an order as prayed for by him in IA No 3, IA No 4 and in the objections to the main execution petition, are all false and denied. The objector has not at all disclosed any of the facts which are already agitated by him in the above said case by way of filling IA No 3, 4



2012/12

and objections to main petition and the filing of the suit in OS 117/2012 as stated above, in the IA No 7. Hence the IA No 3, 4, 7 and the objections filed by the objector to the main execution petition are not at all maintainable under law and they are liable to be dismissed with costs. The allegations in the affidavit in support of IA No 7 that the objector purchased the IA No 7 schedule vacant site property on 28-3-1996 for Rs 53,000=00 from Anantharaj Patel by registered sale deed, that he derived a valid marketable title to the property involved in the said sale deed, that the katha of the objector was mutated in the municipal records on the basis of the alleged sale deed, that the DHR trespassed in to the application schedule property are false and denied. It is true that the DHR filed the above execution petition to take the shares of her properties, which are allotted to her, as per the preliminary decree in OS 77/95 of the Hon'ble Senior Civil judge, Davanagere, FDP 18/2002 of this Hon'ble court. The allegations in the affidavit that the DHR took the execution proceedings behind the back of the objector are false and denied. The allegations that the objector is the bonafide purchaser of the alleged property purchased by him, that he is having each and every right in the alleged sale deed involved property are false and denied. The IA No 3, 4, 7 and objections to the main execution petition filed by the objector are devoid of any merits and they are liable to be dismissed with costs, without making any enquiries as contemplated under order 21 Rule 99 to 101 of CPC. The said IA's and objections are filed only to protract the proceedings of the case, with malafide motive and intention. This decree holder is age old lady and she is having no husband, children and on such reasons the judgment debtors and other persons who were colluded with such judgment debtors, have interfering with the rightful actions taken by this decree holder to execute the decree for partition and separate possession of her shares of properties in the suit involved in OS 77/95, FDP 18/2002. The objector M.G.Javeed has not approached this Hon'ble court with clean hands and he had not disclosed the real facts in his IA No 3, 4, 7 and objections to the main petition and on such reasons the

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said IA's No 3, 4, 7 and objections to the main petition are liable to be dismissed with costs, exemplary costs. In view of the filling of the suit in OS 117/2012 before the Civil Judge court, Harihar by the objector against this decree holder with respect to the application schedule property, the IA No 3, 4, 7 and objections to the main EP filed by the objector are not maintainable under law. That I am the absolute owner in possession of the vacant site property bearing old door No 822, present assessment No 1001/822/1099, measuring East-West:- 18.23 meter, North-South:- 3.35 meter, out of East-West:- 18.23 meter, North-South:- 12.20 meter in J-division, Harihar City and bounded by East :- Conservancy, West:- Main road, North:- Temple of Chowdamma in site No 35, South:- The remaining property of objector, out of the above said 60 X 40 feet property in assessment No 1100/822/1099. The documents produced by me may kindly be marked on my side of evidence.

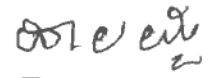
PRAYER:- Hence I most humbly prayed the Hon'ble court be pleased to pass the orders to dismiss the applications, objections of the objector M.G.Javeed and also application filed by the objector Ganesh.B.S with costs in the interest of justice and equity.

I do swear that this is my name, signature and the contents of this my affidavit are explained to me in Kannada language known to me and they are true to the best of my knowledge, belief and information.

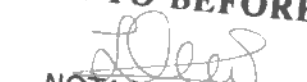
Identified by me,


Advocate,
Harihar.
Date :- 29-3-2016.




Deponent.

SWORN TO BEFORE ME


NOTARY PUBLIC
HARIHAR.
DATE...29/3/16...

NO. OF CORRECTIONS Nil