

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, HUBBALLI**

Present:

Sri. Chinnannavar Rajesh Sadashiv,
Prl. Senior Civil Judge, Hubballi.

Ex. Case No.228/2023

Dated this the 3rd day of February – 2024

**Decree
Holders** : Smt. Jakkavva and others.

.Vs.

**Judgment
Debtors** : Sri. Malappa and others.

PARTIES TO IA No.I

**Third party
applicant** : M/s. Rajesh Enterprises,
No.504A/1, Bulla Compound,
Lamington Road, Hubballi.

-VS-

**Opponent/
Decree-Holder** : Smt. Jakkavva and others.

PARTIES TO IA No.III AND IV

**Third party
applicant** : Vedant Fasions Ltd.,
having registered office at Paridhan
Garment Park, 19, Canal South Road,
SDF-1, A501-A502, Kolkata-700015.

Also having its establishment at:
Ground, First, Second and Third Floor,
Municipal No.136/2, PID No.46A/333,
Ward No.46A, CTS Ward No.01,

CTS No.504/1A, Kailash, Lamington
Road, Hubballi-580020.

-VS-

Opponent/ : Smt. Jakkavva and others.
Decree-Holder

ORDER ON IA No.I, III AND IV

All these I.As. Are arising out of similar provisions of law. Hence, taken for common consideration.

2. Facts on I.A. No.I:

I.A. No.I is filed by third party obstructor U/o.21 Rule 98, 99, 100 and 101 of C.P.C.

3. In support of the application third party obstructor filed affidavit and produced 8 documents. It is the case of the third party obstructor that Rajesh Enterprises firm has purchased leasehold rights of the property bearing CTS No.504/A1 under a sale deed dated 28.05.1982 from one Sumatibai Ramakrishna Bhat and her children. Later the continuing agreement of leasehold rights with him from Holiyappa Siddalingappa Bulla. So, he is in possession of the said property. Now Decree-Holders are claiming possession of the said property by virtue of the decree passed in O.S.No.2/2009. Since he is in possession of the said property and since he was not party to the said decree, he cannot be evicted from the suit property or the

possession of the said property cannot be taken from it. i.e. from Rajesh Enterprises. It has also produced the documents at serial No.4 i.e. rent continuation deed executed by Holiyappa Sidlingappa Bulla in favour of Rajesh Enterprises dated 27.05.2017. So, the earlier tenancy under 28.05.1982 is continued under this deed. The third party obstructor has also produced the agreement between Sidlingappa Ishwarappa Bulla and M/s. Rajesh Enterprises dated 20.05.1982 and judgment and decree of FDP No.13/2019 and RFA No.100301/2019 and 100248/2020. So he prayed to conduct the enquiry under said provisions of law.

4. Decree holders filed objection to said I.A. No.1 and Judgment-Debtor No.1, 5 and 6 have adopted said objection. In said objection Decree-Holders denied that Ramakrishna Bhat and his legal heirs have sold portion of CTS No.504/1 in favour of third party obstructor. They have specifically contended that in view of the decree passed in O.S.No.2/2009 Decree-Holder and Judgment-Debtors No.1, 5 and 6 are entitle for possession of the suit property. The said decree reached the finality and reached upto Hon'ble Apex Court. Hence, now the third party obstructor cannot file this application. The third party obstructor has no independent right over the said property. Hence, it cannot obstruct the possession warrant. So, with other grounds, they prayed to reject the third party application.

5. **Facts under I.A. No.III and IV:**

I.A. No.III is filed U/o.21 Rule 101 and 97 of C.P.C. by third party obstructer by name M/s. Shrinivas C.H. IA No.IV is filed by him U/o. XXI Rule 35 of CPC.

6. In support of the application he has stated that he is a lessee of the suit property bearing CTS No.504/1A under a lease deed dated 09.05.2022 executed by M/s. Rajesh Enterprises. He is in possession of the said property and the said possession cannot be taken out by Decree-Holder or Judgment-Debtor No.1, 5 and 6. Recently on 20.12.2023 bailiff came to suit property and directed him to hand over the possession of the said property. Hence, he is constrained to file this application. He has also contended that the property in his possession is fallen to the share of original defendant No.1. Hence, Decree-Holder cannot take possession of the said property. He also contended that he is not party to the decree. Hence, said decree is not binding upon him. It is further contended that decree holders have mis-represented by the court and obtained illegal possession warrant on previous occasion. So, he prayed to conduct the enquiry on his application and protect his possession.

7. The Decree-Holders filed objection to said I.As. and it is adopted by Judgment-Debtors No.1, 5 and 6. In said objection they have denied independent right of third party obstructer and they have contended that they have

succeeded in the suit upto Hon'ble Apex Court and the present third party obstructer is claiming under Judgment-Debtor No.12 i.e. Holiyappa Sidlingappa Bulla or subsequent lessee M/s. Rajesh Enterprises and hence, he cannot be treated as third party obstructer. So, they prayed to dismiss both I.As. with costs.

8. I have heard learned counsel for the third party obstructer Sri. S.K. Kayakmath on I.A. No.3 and 4. He relied upon judgments of Hon'ble Apex Court in **(1) (2000) 10 SCC 405, (2) Judgment of Hon';ble High Court of Karnataka in RFA No.1288/2003 c/w. 1289/2003** and **(3) AIR 1998 SC 1827**. Heard Advocate for Decree-Holder Sri. A.L. Neelopanth on IA. No.I, III and IV. He relied upon the judgment of Hon'ble Apex Court in **AIR 1998 SC 1754** and **judgment of Hon'be High Court of Karnataka in RSA No.1361/2016 c/w. 1360/2016**. The Advocate for third party obstructer under I.A. No.I is absent. Hence, his argument is taken as nil.

9. I have perused all the applications, the citations relied by both side and the materials on record. The following points arise for my consideration:

1. Whether the third party obstructer under I.A. No.I has made out a case to protect its possession over the suit property under Order

XXI Rule 97 to 101 of C.P.C. or it can obstruct the possession warrant?

2. Whether the third party obstructer under I.A. No.III and IV has made out a case to protect his possession over the suit property under Order XXI Rule 97 to 101 of C.P.C. or U/o.XXI Rule 35 of CPC or he can obstruct the possession warrant?

3. What order?

10. My answers to the above points are as under:

Point No.1 & 2 : In the Negative.
Point No.3 : As per final order, for the following

REASONS

11. **Point No.1 and 2:** Both these points are with respect to same provisions of law, hence taken for common consideration. Looking to the materials on record, the following facts are emerges as admitted facts:

1) O.S.No.2/2009 was filed by the present Decree-Holder No.1 and 2 i.e. namely Jakkavva and Savakka for partition and separate possession. The said suit was decreed on 26.04.2019 by awarding 1/5th share each of the plaintiffs and 1/5th share to each of defendants No.1, 5 and 6. As against preliminary decree, RFA No.100301/2019 was filed before Hon'ble High Court of Karnataka and it is dismissed on 28.04.2023.

2) After passing preliminary decree plaintiffs had filed FDP No.13/2019 and it is allowed on 30.05.2020. As against said FDP, RFA No.100248/2020 was filed and the said RFA was clubbed with earlier RFA No.100301/2019 and by common order dated 24.08.2023 Hon'ble High Court dismissed both appeals.

3) SLP No.23607 and 23608 of 2023 was filed before Hon'ble Apex Court by challenging the judgment and decree in RFAs, but said SLP was dismissed by Hon'ble Apex Court on 30.10.2023. Thereafter, review petition No.1911-1912/2023 was filed before Hon'ble Apex Court and it was also dismissed by Hon'ble Apex Court on 05.12.2023.

4) Initially the decree was put for execution before I Addl. Senior Civil Judge, Dharwad and since some of the suit properties are situated at Hubballi, the said decree is transferred to this Court.

5) The obstructer under I.A. No.I is M/s. Rajesh Enterprises and they are claiming rights over the suit properties under a sub-lease from Holiyappa Sidlingappa Bulla. The obstructer under I.A. No.III and IV are claiming sub-lease from said Rajesh Enterprises.

So, keeping in mind these admitted facts, I have to consider the third party applications as well as objection raised by Decree-Holders. Looking to the materials on record it is very much clear that the preliminary decree is passed in favour of plaintiffs, defendants No.1, 5 and 6.

Thereafter final decree is passed in favour of plaintiffs as well as in favour of defendants No.1, 5 and 6. The appeals filed against them were dismissed by Hon'ble High Court and Hon'ble Apex Court. Looking to the materials on record it also appears that Siddalingappa Bulla the father of original defendant No.12 has purchased leasehold rights from Indian Cotton Company Ltd. The said Siddalingappa Bulla is adoptive father of Holiyappa Bulla. The said Holiyappa Bulla has executed the continuing agreement of lease (document No.4, dated 27.05.2017) in favour of M/s. Rajesh Enterprises. In this document (relied by third party obstructer under I.A. No.I) it is specifically referred as under:

“ಈ ಪ್ರಕಾರ ಚಕಬಂದಿ ಮಧ್ಯದಲ್ಲಿರುವ ಒಟ್ಟು ಕ್ಷೇತ್ರ 2870 ಚ ಪುಟು ಮಾತ್ರ ಇರುತ್ತದೆ. ಸದರ ಆಸ್ತಿಯಲ್ಲಿ ನೀವು ಸನ್ 1982 ನೇ ಇಸ್ವಿಯಿಂದ ಭಾಡಿಗೆಯಿಂದ ಇರುತ್ತೀರಿ. ಸದರ ಇಸ್ವಿಯಲ್ಲಿ ಒಂದು ಭಾಡಿಗೆ ಪತ್ರವನ್ನು ನೋಂದ ಮಾಡಿಕೊಂಡಿರುತ್ತೀರಿ.

ಆ ನೋಂದಣಿ ಪತ್ರದಲ್ಲಿ ಹೇಳಿದಂತೆ ದಿ: 28.05.1982 ರಿಂದ 25 ವರ್ಷ ಮಾತ್ರ ಈ ಅವಧಿಯಲ್ಲಿ ದಿ: 27.05.2007 ಕ್ಕೆ ಮುಗಿದಿರುತ್ತದೆ. ಅಲ್ಲಿಂದ ಇಲ್ಲಿಯವರೆಗೆ ಅಂದರೆ ದಿ: 27.05.2017 ರವರೆಗೂ ನೀವೇ ಭಾಡಿಗೆದಾರರು ಇದ್ದು, ನಿಮ್ಮ ವ್ಯವಹಾರಿಕ ದೃಷ್ಟಿರಿಂದ ಸರಿ ಹೊಂದಿದ್ದು, ಪುನಃ ದಿವಸ (right to Renewal) ಕರಾರಿಗೆ ಒಳಪಟ್ಟು ನೀವು ನನಗೆ 10 ವರ್ಷ ಭಾಡಿಗೆ ಅವಧಿಯನ್ನು ಮುಂದುವರಿಸಿಕೊಡಬೇಕೆಂದು ಕೇಳಿದ್ದರಿಂದ ಇವತ್ತಿನ ದಿವಸ ಈ ಕೆಳಗಿನ ಕರಾರುಗಳಿಗೆ ಒಳಪಟ್ಟು ಭಾಡಿಗೆಯಿಂದ ಕೊಟ್ಟಿದ್ದು ಇರುತ್ತದೆ. ಅವುಗಳ ವಿವರ.”

So, M/s. Rajesh Enterprises has accepted that they are the lessees of Holiyappa S/o. Siddalingappa Bulla. As per document No.5 there was a agreement between

Siddalingappa Ishwarappa Bulla and M/s. Rajesh Enterprises with respect to said property. As per document No.3 Rajesh Enterprises has purchased property from Sumatibhai Ramakrishna Bhat and others and in this document also on page No.3 it is mentioned that the said Ramakrishna Bhat has purchased the leasehold rights from Siddalingappa Ishwarappa Bulla under permanent lease. So, said Ramakrishna Bhat was not absolute owner of the said property, but he was lessee of the said property. So, his L.Rs. have executed sale deed in favour of Rajesh Enterprises only with respect to leasehold rights. So, Rajesh Enterprises is claiming the property through defendant No.12 Holiyappa Siddalingappa Bulla. Hence, they cannot be said that they have got independent rights over the said property.

12. Hon'ble High Court of Karnataka in above said RFA No.100301/2019 and 100248/2020 filed by L.Rs. of Holiyappa Bulla in para No.28 held as under:

“28. As we have held that lease was not permanent, neither the appellants or any person deriving interest under defendants 12 and 13 can claim immunity from eviction from leased property. **They must deliver possession to the plaintiffs and defendants 1, 5 and 6.** Sri. Arun Neelopanth submitted that the appellants are tenants by sufferance, and there was no need to issue ejection notice to them. As the relief of possession was claimed in the suit, the lawful owner can execute the final decree to recover possession. He sought to seek support for his argument by referring to two judgments of the Supreme Court, viz., **Smt. Shanti Devi v. Amal**

Kumar Banerjee *(AIR 1981 SC 1550) and Badrilal v. Municipal Corporation of Indore (AIR 1973 SC 508)."

The defendant No.12 in said suit is none other than Holiyappa Siddalingappa Bulla. So, the third party obstructer under I.A. No.I who is claiming the property through defendant No.12 i.e. Holiyappa Bulla cannot be said as a firm having independent right over the said property. His lessor was directed to hand over the possession of the suit property in favour of plaintiffs and defendants No.1, 5 and 6. Hence, now the third party obstructer under I.A. No.I is bound by the decree and he cannot be said as independent third party obstructer.

13. The third party obstructer under I.A. No.III and IV claiming that they are lessees under Rajesh Enterprises under a lease deed dated 09.05.2022. So, they are also claiming rights over the suit property under original lessor Holiyappa Siddalingappa Bulla. So, they also cannot be said as third party obstructers.

14. As per Order XXI Rule 102 of C.P.C. the Rules from 98-100 of Order XXI are not applicable with respect to transferee pendente lite. The said provision is as under:

"102. Rules not applicable to transferee pendente lite – Nothing in Rules 98 and 100 shall apply to resistance or obstruction in

execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any person.”

The said provision is aptly applicable to the facts of this case. Though there is no transfer of leasehold rights, but there is execution of lease agreements during pendency of partition suit. O.S.No.2/2009 was filed in the year 2009 and the lease deed in favour of Rajesh Enterprises is dated 27.05.2017 and lease deed in favour of Vedanth Fashion is dated 09.05.2022. So, both these lease deeds are subsequent to filing of original suit. Hence, by applying the said provision I hold that they cannot be said as a third party obstructers or they have got independent right over the suit property. Holiyappa Siddalingappa Bulla who has executed a lease in favour of M/s. Rajesh Enterprises was defendant No.12 in said suit. The lease in favour of Vedanth Fashion is subsequent to the judgment of FDP. Decree holders have given a paper publication dated 29.04.2019 in Vijaya Vani Kannada newspaper, on 01.05.2019 in Samyukta Karnataka newspaper and on 05.05.2019 in Vijaya Karnataka newspaper stating that OS No.2/2009 is pending before the court and third party shall not enter any sort of transaction with Holiyappa Bulla or his L.Rs. They have also given paper

publication in Vijayavani on 02.11.2023 and in Vijaya Karnataka on 02.11.2023 about orders in RFA and SLP. So, the obstructer under I.A. No.III and IV should have noticed said publications.

15. In order to attract enquiry U/o.XXI Rule 97 of C.P.C. the third party obstructer should have independent rights, but in this case the third party obstructers have no any independent rights. Hence, their applications cannot be allowed.

16. In the judgment relied by Decree-Holders reported in **AIR 1998 SC 1754, between Silver Forum Pvt. Ltd. Vs Rajeev Trust and another**, it is held as under:

“It is clear that executing court can decide whether the resistor or obstructer is a person bound by the decree and he refuses to vacate the property. The question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97 (2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments made by the resistor. Of course the court can direct the parties to adduce the

evidence for such determination if the court deems it necessary.”

The said judgment is aptly applicable to the facts of this case. So, by applying the said ruling I hold that now the third party obstructers are bound by the decree and they cannot obstruct the execution of the decree. They cannot assert that they are not aware about the pendency of the suit or appeals. The materials available on record is sufficient to hold that they cannot obstruct the decree up held upto Hon'ble Apex Court. So, looking to the admitted facts only I hold that the recording of evidence on said I.As. is not at all necessary.

17. Advocate for Decree-Holder relied the judgment of our own Hon'ble High Court in **RSA No.1361/2016 c/w. RSA No.1360/2016**, wherein in para No.9 it is held as under:

“9. It is a trite law that third party applicant to maintain an application under Order 97 Rule XXI of C.P.C. should possess an independent title and applicant's title should be superior to that of the decree holders. In the present case on hand, the third party applicants are tracing rights based on unregistered sale deeds through the judgment debtors who have suffered preliminary decree passed in O.S.No.265/1995 and also final decree passed in FDP No.28/2002. This Court in catena of judgments has held that third

party can protect his possession only in the event he is able to establish that he has an independent title. The third party objector who traces his right through the judgment debtor has no locus to intervene in the pending execution case. His right to protect possession is by showing legitimate, legal and better right and possession than the Decree-Holders. The finding recorded by the appellate Court while entertaining the appeal that the third party applicants have a better title than that of the Decree-Holders suffers from serious perversity and the said conclusions recorded therein are found to be patently erroneous. Remedy under Rule 97 Order XXI of C.P.C. is available to a person in actual possession with independent right over the property. Only such person has the right to record resistance and not a party who is tracing his right under the judgment debtor who has suffered a decree.”

So, by applying said judgment also I hold that the third party obstructers have no any independent right over the suit property. Hence, they cannot resist the decree.

18. Advocate for third party obstructer Sri. S.K. Kayakmath argued that this Court cannot give possession in

favour of Judgment-Debtor No.6, as they are not Decree-Holders before the Court. But I decline to accept this contention. As per Order XXI Rule 15 relied by him only it is crystal clear that the Court can execute the joint decree even if any of the decree holders approaches the Court. In this case Judgment-Debtor No.1, 5 and 6 have also filed application U/o. XXI Rule 35 of C.P.C. The final decree is passed in their favour also. The suit was for partition and separate possession. Defendant No.1 is brother of plaintiffs and defendants No.5 and 6 are sisters of the plaintiffs. They have got 1/5th share each in the suit properties. So, the court cannot refuse the execution of the decree on technical grounds. Third party obstructer who is sub-lessee cannot raise this ground at this stage.

19. Sri. S.K. Kayakmath Advocate also raised objection that the Court commissioner in FDP has filed a report about excess land, hence, now Decree-Holder and Judgment-Debtor No.1, 5 and 6 are not entitle for execution of said FDP. But I decline to accept this contention also, as third party obstructer cannot raise this objection. He has no locus standi to raise this objection. He is claiming the property as a sub-lessee and nothing but through Judgment-Debtor No.12. Hence, said objection also rejected.

20. The citations relied by Sri. S.K. Kayakmath, Advocate as referred above are perused by me. But the

facts and circumstances of the said case are not at all applicable to the facts of this case. Hence, I hold that the said citations cannot be applied. As per the citation at serial No.2 itself any person includes decree holder also. The third party obstructer need not wait for dispossession and then apply for relief U/o. XXI Rule 97 of CPC, but in this case third party obstructer has not made out a ground to obstruct the possession warrant.

21. Looking to the materials on record it is crystal clear that Decree-Holders have obtained the decree by fighting the litigation since 2009 and upto Hon'ble Apex Court. The defendant No.12 in said suit and his L.Rs. have taken all the contentions available for them upto Hon'ble Apex Court. But they have failed. Hence, now the third party obstructer who are claiming the property through said Bulla family cannot be said as independent obstructers or they have got independent right over the suit properties. These applications are filed only in order to see that Decree-Holders shall not enjoy the fruits of the decree. But such applications have to be dealt with strictly. The object of the decree is to see that decree holder shall enjoy the fruits of the decree. Hence, in order to execute the decree I hold that decree holders, judgment debtos No.1, 5 and 6 are entitle for possession warrant with respect to suit property bearing CTS No.504/A1 and also entitle for police protection. Accordingly, I answer points No.1 and 2 in **Negative**.

22. **Point No.3:** In view of my answer to point No.1 and 2 in Negative, I proceed to pass the following:

ORDER

The I.A. No.I, III and IV filed by third party obstructers are rejected with costs.

In order to execute the decree, issue possession warrant as per final decree with respect to CTS No.504/A1 in favour of Decree-Holders and Judgment-Debtor No.1, 5 and 6. On previous occasions this court has granted police protection and the relief of break open of lock put to the suit property. This time also in order to execute the decree the said police protection and the relief of break open the lock put to the suit property is granted.

(Dictated to the Stenographer, transcribed and computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the 3rd day of February - 2024)

**(Chinnannavar Rajesh Sadashiv)
Prl. Senior Civil Judge,
Hubballi.**