

**IN THE COURT OF PRL. SENIOR CIVIL JUDGE & CJM,
GADAG.**

**Present :- Smt.Preeti.S.Sadarjoshi,
B.A., LL.B.,
Prl. Senior Civil Judge & CJM., GADAG.**

Dated this 30th day of March, 2024.

Exc.No.106/2022

DECREE HOLDER:-

Ramappa S/o Hanamappa Kalkeri.

-V/s-

JUDGMENT DEBTORS:-

Laxmappa S/o Tirakappa Chevatannavar
Since deceased by his L.Rs and others.

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PARTIES TO IA.No.4

APPLICANT:-

Mailarappa S/o Laxmappa Chevatannavar
(J.Dr.No.1(a))

(By Sri A.A.Hosur, Advocate)

V/S

OPPONENT:-

Ramappa S/o Hanamappa Kalkeri

(By Sri I.A.Bepari, Advocate)

**ORDERS ON I.A.No.4 FILED BY THE J.Drs. U/SEC.151
OF CPC**

1. The learned counsel for the J.Drs. has filed I.A.No.4 U/Sec.151 of CPC to conduct enquiry regarding amount deposited with the Tahasildar, Mundargi towards the auction conducted by the Tahasildar, Mundargi every year as suit lands are under the custody of Government U/Sec.145 of Cr.P.C. before proceeding with further steps and the amount so deposited may be called for, remitted to this Court to decide the amount so deposited is to be given either to the D.Hr. or to the J.Drs.

2. The said application is accompanied by the affidavit of the J.Dr.No.1(a) stating that the suit properties are being taken over by the Government pending the top noted proceedings U/Sec.145 of Cr.P.C. as per the order of the Assistant Commissioner, Gadag and directed the Tahasildar, Mundargi to take the custody and conduct auction sale every year as a Court receiver. Since from 1990 the suit properties are under the care and custody of the Tahasildar, Mundargi. The Tahasildar, Mundargi went

on conducting the auction sale every year vide MAG/AP No.31/2013-14. The said amount is lying with the Tahasildar, Mundargi. The distribution of said amount is to be decided by this Court before taking further steps by the D.Hr. An enquiry is to be conducted by calling for records and leading evidence over the same. Hence, the J.Drs. prayed to conduct an enquiry regarding the amount deposited with the Tahasildar, Mundargi towards auction conducted by the Tahasildar Mundargi every year as suit lands are under the custody of Government. Hence, the J.Drs. prayed to allow I.A.No.4.

3. Per contra, the D.Hr. has filed objection to I.A.No.4 contending that the application is not maintainable either in law or on facts and is filed with ill-motive. This Court has no jurisdiction to conduct such proceedings. It is ordered that the D.Hr. be put in possession of suit schedule property as per order in RSA No.6230/2012 by the Hon'ble High Court of Karnataka. In this regard, the J.Drs filed false complaint and case was

registered bearing C.C.No.143/2000. The D.Hr. is acquitted. Thereafter, the J.Drs. through Tahasildar, Mundargi has filed proceedings U/Sec.145 of Cr.P.C. bearing MAG No.19/1999-2000 and the Tahasildar, Mundargi was appointed as receiver and conducted auction sale of standing crops. The D.Hr. preferred Criminal Revision Petition No.78/2013 U/Sec.397 of Cr.P.C. before Hon'ble Sessions Court, Gadag which came to be allowed. The D.Hr. is in possession of suit schedule property. At that time, the Tahasildar, Mundargi has not released the amount in favour of D.Hr. The amount is pertaining to D.Hr. The J.Drs. have handed over the possession of petition property in favour of D.Hr. in 1997. The D.Hr. has made huge expenses towards development of petition land. The D.Hr. is entitled to amount. The D.Hr. is aged about 70 years and the Decree is of the year 2001. The D.Hr. is fighting for justice since from 24 years. The J.Drs. on one or other pretext are postponing the payment. Hence, the D.Hr. prayed to allow I.A.No.4.

4. Heard arguments of learned respective counsels, reply arguments of the learned counsel for the J.Drs. on I.A.No.4. Perused the materials available on record.

5. The learned counsel for J.Drs. has argued that before registration of sale deeds, everything is to be cleared. Ambiguity is to be decided. Amount is to be called for. Bank has not supplied loan documents. The J.Drs have cleared loan. Enquiry is to be conducted. Hence, the J.Drs. prayed to allow I.A.No.4.

6. The learned counsel for the D.Hr. has argued that the J.Drs. have no right to file this application. Question of enquiry do not survive for consideration. The D.Hr. has undertaken before Hon'ble High Court of Karnataka that he will clear of loan. Question of fresh determination of I.A.No.4 do not arise. Hence, the learned counsel for the D.Hr. prayed to allow I.A.No.4.

7. On careful consideration of materials available on record, the Hon'ble High Court of Karnataka in RSA No.6230/2012 has allowed appeal in part with costs. Suit

filed by the plaintiff i.e. D.Hr. came to be decreed and the defendants/J.Dr.No.1 to 3 were directed to execute the registered sale deed in respect of suit schedule property within three months from the date of receipt of certified copy of this order, failing which, the plaintiff is at liberty to get the sale deed in his favour in execution proceedings in accordance with law.

8. In the said Judgment, the Hon'ble High Court of Karnataka has disposed of I.A. as "I.A.No.1/2019 does not survive for consideration and is accordingly dismissed. However, liberty is reserved with the plaintiff/appellant to pursue application before respondent No.4 and 5". The respondent No.4 and 5 are the Assistant Commissioner, Gadag and the Tahasildar, Mundargi respectively.

9. On perusal of records, liberty is given to the plaintiff/appellant to pursue the application before the respondent No.4 and 5 i.e. the Assistant Commissioner, Gadag and the Tahasildar, Mundargi. No documents are placed before this Court to show that any appeal is

preferred against the Judgment of Hon'ble High Court of Karnataka in RSA No.6230/2012. On the basis of materials available on record, it is clear the Judgment has attained finality. The J.Drs. are directed to execute the registered sale deed in respect of suit schedule property, failing which, the plaintiff/D.Hr. is at liberty to get the sale deed executed in his favour in execution proceedings in accordance with law.

10. Conducting enquiry regarding amount deposited with the Tahasildar, Mundargi towards the auction conducted by the said Tahasildar, Mundargi every year as the suit lands are under the custody of the Government U/Sec.145 of Cr.P.C. will not survive for consideration in view of Judgment of Hon'ble High Court of Karnataka in RSA No.6230/2012. An efficacious alternative remedy is available to the J.Drs. Application is devoid of merits. Accordingly, this Court deems fit to dismiss I.A.No.4. Hence, this Court inclines to pass the following:-

ORDER

I.A.No.4 filed by the J.Drs.
U/Sec.151 of CPC dated 15/11/2023 is
dismissed.

Under these circumstances, no
order as to costs.

(Dictated to the Stenographer, transcribed and typed by him, corrected and then
signed and pronounced by me in open Court on this 30th day of March, 2024)

Sd/-30/03/2024

(Smt. P. S. SADARJOSHI)
Prl. Senior Civil Judge and CJM.,
Gadag.