

KAHS310001622018



**IN THE COURT OF THE CIVIL JUDGE AND
JMFC, ARAKALAGUD**

PRESENT: CHAMPASHREE R., *B.A.L., LL.B., LL.M.*,
Civil Judge and JMFC.,
Arakalgud.

DATED THIS 11th DAY OF APRIL, 2025

Execution Petition No.3/2018

BETWEEN:

1. Javaramma W/o Bairaiah,
66 years,
2. Mariyaiah S/o Bairaiah,
35 years,
Both are R/at Bidaruru village,
Konanur Hobli,
Arakalagud Taluk,
3. Jayamma W/o Shivanna,
45 years,
R/o Ramenahalli village,
Kasaba Hobli,
Arakalagud Taluk,
4. B. Subbaiah S/o Bairaiah,
41 years,
R/o K.H.B. Colony,
Holenarasipura Taluk,
5. Gowramma W/o Bairaiah,
32 years,

R/o Kesavathuru village,
Konanur Hobli,
Arakalagud Taluk,

6. Savitha D/o Bairaiah,
32 years,
R/o K.H.B. colony,
Holenarasipura Taluk,

7. B.Krishna S/o Bairaiah,
32 years,
R/o Bidaruru village,
Konanur Hobli,
Arakalagud Taluk.

....Decree Holders

(By Sri S.H.Revanna, Advocate)

AND

1. Papanna S/o Sanjivaiah,
50 years,
Agriculture,

2. Ramanna S/o Sanjeevaiah,
Aged about 45 years,
Both are R/at Ambedkar nagara,
Konanur , Konanur Hobli,
Arakalagud Taluk.
(By Sri A.S.Madhu, Advocate)

....Judgment Debtor

ORDERS

D.H.R filed present petition seeking to execute the Decree of Court in R.A.81 / 2007, wherein JDRs were restrained from causing interefrence to DHR's possession.

BRIEF FACTS:

2. It is stated that, DHR filed suit in O.S.No.81/2007 for the relief of Perpetual Injunction, after full fledged trial suit was decreed on

04.02.2014 and defendants were restrained from causing interference to D.H.R/Plaintiff's possession.

3. It is stated that, despite JDRs caused interference to Plaintiff's possession on 11.01.2018 by trespassing into the suit property and started to plant arecanut and banana plants, and thereby infringed directions of the Court. . It is stated that, therefore, he filed complaint before the Konanur Police station, but said police suggested to approach the Court and as issued NCR. Hence, present petition.

4. In spite of issuance of notice to JDRs, they failed to appear before the Court. Hence, JDRs were placed absent.

5. Heard by counsel for DHR. On the basis of aforesaid petition, the following points arise for consideration of this Court:

1. Whether the DHR has made out grounds to allow the petition?

2. What order ?

6. Based on the oral and documentary evidence of DHR, this Court proceeds to answer the above points as under :

Point No.1: In the Affirmative.

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

REASONS

7. **Point No. 1:** It is the specific case of DHR that he filed suit in O.S.No.81/2007 for the relief of Perpetual Injunction, after full fledged trial suit was Decreed on 04.02.2015 and Defendants/JDRs were restrained from causing interference to Plaintiff's/DHR's possession. Despite JDRs caused interference to Plaintiff's possession on

11.01.2018 by trespassing into the suit property and trying to plant arecanut and Banana plant.

8. On perusal of records, it is noticed that present petition is filed under Order XXI Rule 11 of Code of Civil Procedure, 1908 (CPC for short) for executing the Decree for the relief of injunction. As per CPC, the Decree for injunction be executed under Order XXI Rule 32 of CPC, but, DHR has filed the present petition under Order XXI Rule 11 of CPC. Order XXI Rule 11 of CPC explains the mode of filing application for executing. However, in interest of justice, present application though filed under Order XXI Rule 11 CPC is considered as filed under Order XXI Rule 32 of CPC.

9. As per Order XXI Rule 32 of CPC when the party against whom a Decree for the relief of an injunction has been passed and the person against whom such Decree has been passed and such person had an opportunity of obeying the Decree and has wilfully failed to obey it then such Decree may be enforced against said person by detention in civil prison or by the attachment of his property or by both.

10. As per Order XXI Rule 32 of CPC when a Decree for injunction has to be executed, then two points have to be considered, one is the person against whom Decree has been passed 'had an opportunity of obeying the Decree' and the second point is that 'such person has wilfully failed to obey such Decree'.

11. PW1 to prove that J.D.R.s had an opportunity of obeying the Decree, PW1 mainly relied on Ex.P1 and Ex.P2. Ex.P1 and Ex.P2 are

the Judgment and Decree respectively in R.A.No.81/2007. On going through the said Judgment and Decree it is noticed that J.D.R.s herein were arrayed as defendant therein and they had appeared through advocate and they had contested the suit and after full fledged trial suit was decreed and J.D.R.s herein were restrained from interfering with the possession and enjoyment of Plaintiffs over the suit property by way of permanent injunction.

12. On looking into Ex.P1 and Ex.P2 it is noticed that JDRs who were Defendants in original suit had appeared before the Court and had contested the cases, this being the fact it is clear that the Decree passed by the said Courts are within the knowledge of those JDRs, therefore, certainly the JDRs had an opportunity of obeying the Decree of the Court. Further, inspite of service of notice to JDRs in present petition they failed to appear, therefore it is considered that JDRs had no any inhibition to obey the Decree of the Court.

13. Another aspect to be looked into for executing decree under Order XXI Rule 32 of CPC is 'wilful disobedience'. To prove that JDRs herein had wilfully disobeyed the Decree of the Court, PW.1 mainly relied on Ex.P5 to Ex.P8. Ex.P6 is the complaint given by DHR No.7 herein to Circle Inspector, Konanur police station, Arkalgud Taluk, Hassan district on 12.01.2018, wherein it is stated that DHR had filed a suit in O.S.N:81/2007 against the JDRs with respect to property bearing Sy No:53, measuring 2 acres 26 guntas in Muddanahalli village, Konanur and said suit was decreed on 04.02.2015 and JDRs were restrained from causing interference to plaintiff's possession in suit property. Despite on 11.01.2018 during night time JDR interference

with plaintiff possession in the above mentioned property and also threatened DHR. Against the said complaint, Konanur police has registered NCR on 12.01.2018

14. On looking into the Ex.P5 and Ex.P6, it appears that inspite of Judgment in O.S.No.81/2007, JDRs have caused interference in the suit property and against the same NCR was also registered. Therefore, on looking into Ex.P5 and Ex.P6 it appears that, JDRs have wilfully disobeyed the Decree of Court.

15. On meticulously observing Ex.P1 and Ex.P2, Ex.P5 to Ex.P8, it is clear that JDRs were restrained from causing interference to DHR'S possession in suit property, JDRs had an opportunity of obeying the said Decree but JDRs wilfully disobeyed the said Decree, therefore, it is clear that JDRs have actually breached the injunction order of the Court and said action of the JDRs is deliberate and conscious action, this being the fact it is necessary to execute the Decree of the court in O.S.No.81/2007 under Order XXI Rule 32 of CPC.

16. As discussed above, as per Order XXI Rule 32 of CPC, Decree for relief of injunction can be executed either by detention in civil prison or by attachment and sale of property of person against whom Decree has been passed or by both, herein present petition, DHRs, prays to direct P.S.I., Konanur for enforcement of decree in O.S.81/2007, issue directions to A.D.L.R, Araklagud to measure and fix boundaries to suit property, to detain JDRs in civil prison for violating the order of the Court O.S.No.81/2007 and for attachment of properties of J.D.R's. As discussed above under Order XXI Rule 32 of C.P.C, decree for the

relief of injunction can be executed either by detention in civil prison or by attachment and sale of property of person against whom decree has been passed but plaintiff as sought for the relief as mentioned above but this Court as not decretionary power under Order XXI Rule 32 of C.P.C, either to direct jurisdictional police to enforce the decree or to direct ADLR to measure and fix the boundaries of suit property. Further, D.H.R has also sought for attachment and sale of J.D.R.s property by D.H.R has not produced any documents of J.D.R's property. Therefore, this Court has to execute the decree only by way of detaining J.D.R in Civil Prison.

17. Therefore, taking into consideration the fact that though J.D.R.s were restrained from causing interference to DHR'S possession in suit property and inspite JDRs had an opportunity of obeying the said Decree, they willfully disobeyed the said Decree and D.H.R., seeks to execute the said Decree only by detaining the J.D.R.s by detaining in civil imprisonment, this Court opines D.H.R made out grounds to allow the Petition. **Hence, this Court answer point No.1 in the Affirmative.**

18. **Point No.2:** For the above said discussion to point No.1, this Court proceed to pass the following:

ORDER

Petition filed by DHR for executing the judgment in O.S.No.81/2007 is hereby allowed with cost.

Judgment debtors are ordered to be detained in civil prison for a period of one month for disobeying the order dated

04/02/2015 passed by the Civil Judge and
J.M.F.C., Arakalagud in O.S.No.81/2007.

Issue arrest warrant against JDR.'s if 'D'
amount is paid by D.H.R.

(Dictated directly to the stenographer on Computer, the same is revised, edited and corrected by me
and then pronounced in the Open Court on this the 11TH day of April 2025).

(Smt. CHAMPASHREE R.)
Civil Judge and JMFC,
Arakalagud.