



IN THE COURT OF THE CIVIL JUDGE AND
JMFC BYADGI

Present: **Sri Suresh Wagganavar, MA. LL.B., (Spl)**
Civil Judge & JMFC, Byadgi.

Dated this the 16th day of April, 2025

Execution Case No.09/2019

1. Sri.Veerappa S/o Tippanna Kummur
(**Dead**) and others.

(By Sri.F.M.M., Advocate)
.....DHrs:

V/S

1. Hanumantappa S/o Nagappa Barki
(**Dead**) and others.

(By Sri.S.B.A., Advocate for Jdr.No.1(a) to
(c))

(Jdr No.1(d), (e) absent)

.... Jdrs:

PARTIES TO THE IA NO.I

1. Smt.Sushilavva W/o Veerappa Kummur.
2. Bangareppa S/o Veerappa Kummur.
3. Nagaraj S/o Veerappa Kummur.
4. Rudrappa S/o Tippanna Kummur.



5. Smt.Basavva W/o Subhashappa
Ningannanavar.
6. Smt.Nagavva W/o Nagappa Agadi.
7. Smt.Halavva W/o Tippanna Kummur.

.... Applicants

VS

1. Smt.Sundaravva W/o Hanumantappa Barki.
2. Nagaraj S/o Hanumantappa Barki.
3. Ashok S/o Hanumantappa Barki.
4. Lakshmi S/o Hanumantappa Barki.
5. Smt.Savitra W/o Guddappa Balambeeda.
6. Smt.Yashodha W/o Guddappa Mantagani.

.... Opponents

ORDERS ON I.A.No.1

This application is filed by the petitioner/DHr U/o.26 Rule 10(b) R/w.Sec.151 of CPC with prayer to appoint the court commissioner to execute the sale deed of schedule property in favor of DHR as per decree passed in OS No.95/1995 to meet the ends of justice & equity.



2. In the affidavit petitioner has stated that, he has filed suit for specific performance of contract. After full fledged trail the suit is decreed. Thereafter, the legal heirs of defendant has filed RA.No.71/2003. The said appeal had dismissed on 21.04.2010. In terms of decree it is just & necessary to execute the sale deed in respect of suit property by appointing court commissioner hence, prayed to allow the application.

3. In this petition JDR's have appeared and filed objection to the said application. Wherein it is contended that the suit was decreed on 16.07.2003. Thereafter, the Dhr has not filed application within time. Hence, the petition filed by the Dhr is barred by law of limitation. The Dhr has filed petition within 12 years after decree. In this case, the Dhr has filed this petition after lapse of 21 years. Hence, prays to reject the application.

4. Head arguments from both side. Perused entire records available on the file. The point that would arise for my consideration is:

“Whether appointment of commissioner to execute the sale deed in favor of Dhr of suit property in terms of decree



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passed in OS.No.95/1995 is
necessary?

5. My answer is in the Affirmative, for the following;

: REASONS :

6. The Dhr has prayed to appoint court commissioner to execute the regular sale deed in respect of the suit schedule property as per the order passed in O.S.95/1995 on the file of this court. The DHR has filed suit for specific performance of contract before this court in OS.No.95/1995 and case is came to be ended on 16.07.2003. Thereafter the legal heirs of Jdr has preferred appeal bearing RA.No.71/2003 before the Hon'ble Senior Civil Judge, Ranebennur. The said appeal was also dismissed on 21.04.2010. Further till today the JDr has not produced any stay order of competent court of law. The counsel for Jdr has argued that after lapse of 21 years, the Dhr has filed this application. Hence, the petition is barred by law of limitation. On perusal of OS.No.95/1995 and RA.No.71/2003, it reveals that the RA.No.71/2003 was dismissed on 21.04.2010. It is pertinent to note here that the Regular Appeal is the continuation of the suit OS.No.95/1995. The said Regular Appeal was dismissed on 21.04.2010. Therefore, the limitation for



filing execution petition start from 21.04.2010. The Dhr has filed this petition on 12.09.2019. Therefore, the execution petition is within time. The argument canvased by the counsel for Jdr is not accepted. After the passing of decree in OS.No.95/1995, till today the Jdr has not received balance consideration amount of Rs.5,125/-. On perusal of order sheet and documents, the Dhr has not deposited the said balance consideration amount before this Court. The bounded duty of the Dhr to deposit the balance consideration amount before the Court. Hence Under these circumstances it is obligation on the part of this Court to proceed with the case short of attained finality. In the background it is needless to mention that, if Court Commissioner as prayed by petitioner is not appointed there will be failure of duty of the part of this court. Appointment of Court Commissioner to execute regular sale deed in respect of suit property is necessary. Hence, I answer the above **point in the Affirmative** and proceed to pass the following:

ORDER

I.A.No.1 filed by the Dhr
U/o.26 Rule.10(b) R/w.Sec.151 of
CPC, is hereby allowed.



Sri.S.H.Gundappanavar
Advocate, Byadgi is hereby
appointed as Court Commissioner
to execute regular sale deed in
favor of Dhr's as per decree passed
in O.S.No.95/1995 dtd:16.07.2003.

Commissioner fee is fixed at
Rs.5,000/-. Petitioner is hereby
directed to deposit the Court
Commissioner fee.

The Dhr's are hereby directed
to deposit sale balance
consideration amount of Rs.5,125/-.

Dhr is permitted to file the
draft sale deed before the
Administrative sheristedar.

Office is directed to issue
Commissioner Warrant subject to
deposit Commissioner fee and
balance sale consideration amount
and if P.F paid.

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Await report Call on:
06.06.2025.

(Dictated to the stenographer, directly typed by her, corrected, and then pronounced by me in the open court on this the **16th day of April, 2025**)

Sd/-
(SURESH WAGGANAVAR)
Civil Judge & JMFC,
Byadgi.