

IN THE COURT OF THE CIVIL JUDGE AND JMFC.,
AT HANGAL

Present: Sri. JANARDHANA S.K., B.A.L., LL.B.,
Civil Judge and JMFC., Hangal.

Ex.No.4 of 2016

DATED THIS THE 8th DAY OF APRIL 2025

Decree Holder : Basavaraj S/o Yallappa Sheshagiri

(By Sri.S.B.Sheshagiri - Adv.)

V/s.

Judgment Debtors: 1. Shidlingappa S/o Basappa Master
and two others.

(J.Dr.No.1 to 3 absent)

PARTIES TO I.A. No.II

Applicant/

Decree Holder : Basavaraj S/o Yallappa Sheshagiri
Age: 35 years, Occ: Carpenter
R/o: Savikeri, Tq: Hangal, Dist: Haveri.

- V/s -

Opponent/

Judgment Debtor : Shidlingappa S/o Basappa Master
Age: 65 years, Occ: Agriculturist,
R/o: Savikeri, Tq: Hangal, Dist: Haveri.
And 2 others.

I	Provision under which the application is filed	U/o.21 Rule 32 R/w 151 of C.P.C.,
II	Relief sought for	To commit the J.Drs No.1 to 3 to the civil prison
III	Date on which the application is filed	10-03-2016
IV	Number of application	I.A.No.II
V	The date of which objections filed by the different opponents	NIL
VI	Date on which the orders were passed on said application	08-04-2025

(Sri. Janardhana. S.K.)
Civil Judge & JMFC.,
Hangal.

ORDERS ON I.A.No.II

The D.Hr/applicant has filed this application U/o.21 Rule 32 R/w 151 of C.P.C., seeking to commit the J.Drs No.1 to 3 to the civil prison for violation of decree of permanent injunction.

2. As could be seen from record, despite due service of notice of petition, the J.Drs remained absent and did not resisted the petition.

3. The points that would arise for consideration of this Court are as follows:-

POINTS

1. Whether the D.Hr/applicant proves that judgment debtors willfully violated the decree of permanent injunction passed in O.S.No.11/2015?

2. Whether J.Dr.No. 1 to 3 are liable to be committed to the civil prison?

3. What order?

4. In order to prove the case, the D.Hr has examined himself has PW-1 and no documents came to be marked on his behalf. Since J.Drs have been absent from the proceedings, PW-1 has not been cross examined.

5. Despite sufficient opportunities being given, the counsel for the D.Hr did not come forward to address the arguments. Perused an oral and documentary evidence available on record.

6. The findings of this court on aforesaid points are as follows:-

Point No.1 : In the negative

Point No.2 : In the negative

***Point No.3 : As per final order
for following:-***

REASONS

7. **Point No.1 and 2** :- The D.Hr has filed the present petition U/o. XXI Rule 11 of CPC for execution of decree for permanent injunction in O.S.No.11/2015 on the file of this

court. In the affidavit annexed to the application the D.Hr has deposed the facts that he had filed suit in O.S.No.11/2015 on the file of this court for the relief of permanent injunction and thereby by virtue of decree dated 07-08-2015 the defendants/ J.Drs are restrained from interfering in peaceful possession and enjoyment of the petition/suit schedule property bearing VPC.No.265 measuring East-West : 35 and South-North : 40 ft bounded east by road, west by property of Sri.Parameshawarappa Sidalingappa Kanneshawara, north by land in Sy.No.119 and south by vacant space belonging to Sri.Gadigeppa Jigalikoppa. It is further deposed that, the J.Drs did not challenged aforesaid decree and therefore, decree reached finality and despite said decree for permanent injunction, the J.Drs interfered in peaceful possession and enjoyment of the petition schedule property and as such, it is necessary to punish by J.Dr confining them in civil prison. On said grounds, it is prayed to allow the application.

8. The principle of breach of or violation of decree of permanent injunction requires proof behind reasonable doubt as in criminal case and alleged breach thereof shall be intentional and willful on the part of person against whom decree of permanent injunction has been ordered. Therefore, it is incumbent upon the decree holder to establish alleged breach of or disobedience of decree of permanent injunction on the part of judgment debtors is of willful in nature and

beyond reasonable doubt. **The Hon'ble Apex Court in between Kanversingh Saini V/s. High Court of Delhi (2012)**

4 SCC 307 has categorically held as follows:-

“ 38. The contempt being quasi criminal in nature the standard of proof required is in same manner as in other criminal cases. The alleged contemnor is entitle to the protection of all safeguard/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be clear cut case of obstruction of administration of justice by a party intentionally to bring the matter with the ambit of said provision. The case should not rest only on surmises and conjectures.”

9. By bearing in mind aforesaid settled principle of law regarding violation of decree of permanent injunction as well as temporary injunction, it is necessary to scrutinize evidence let in by the decree holder to prove alleged willful disobedience on the part of the judgment debtors. As indicated earlier, to prove alleged breach or disobedience of decree of permanent injunction by the judgment debtors, the decree holder has examined himself as PW-1 by filing affidavit in lieu of his enquiry, wherein he has deposed facts regarding suit filed by him against the judgment debtors in O.S.No.11/2015 on the file of this court for the relief of permanent injunction and decree passed in his favour as per decree dated 07-08-2015 and same is reached finality in view of failure of the J.Drs to challenged the said decree in appeal. Decree holder/PW-1 further deposed regarding alleged violation of decree passed in

O.S.No.11/2015 in his favour by the J.Drs by their act of interference in peaceful possession and enjoyment of decree schedule property which constrained him to file this execution petition along with present application seeking to put the J.Drs in civil prison.

10. Though the D.Hr/PW-1 did not marked any documents on his behalf during his enquiry, at the same time he has produced certified copy of decree in O.S.No.11/2015 on the file of this court. It is settled law is that marking of certified copies judgment and decree of the courts not at all necessary. In this regard, on perusal of certified copy of said decree, it is forthcoming that, has rightly contended by the D.Hr, his suit in O.S.No.11/2015 against the defendants/D.Hr No.1 to 3 for the relief of permanent injunction came to be decreed and consequently, decree was drawn by this court on 17-08-2015. Hence, said decree is binding on the defendants/J.Drs and if any violation on their part definitely is of serious consequence on proof of disobedience. In fact, no appeal preferred by the J.Dr/defendants by challenging said decree of permanent injunction and therefore, same is reached finality.

11. In addition, upon consideration of oral testimony of D.Hr/PW-1 in the form of affidavit filed in lieu of examination in chief, his testimony is remained undisputed as J.Drs through out the proceedings remained absent and did not contested the petition by filing objections. Mere failure to

contest the petition itself not a ground to believe alleged disobedience or contempt decree of permanent injunction as claimed by the D.Hr. By exclusion of failure to contest the petition and present application, as stated earlier, the D.Hr/PW-1 is required to establish alleged breach of decree of permanent injunction by the defendants with degree of proof beyond reasonable proof and with cogent evidence.

12. As could be seen from facts deposed in the affidavit filed in lieu of his examination in chief and evidence on record, the decree holder except deposed facts regarding the judgment debtors caused interference in peaceful possession and enjoyment of the suit schedule property in violation of decree passed in O.S.No.11/2015, has never specifically deposed day, month, year and time at in which the judgment debtors herein attempted to interfere in peaceful possession and enjoyment of the suit schedule property by him. As indicated earlier, proof of disobedience and violation of decree of permanent injunction is of beyond reasonable doubt. In this regard, the decree holder ought to have averred actual day, month, year and time at which the judgment debtors interfered in peaceful possession and enjoyment of the suit schedule property. Except bald and mere deposition of facts that judgment debtors had interfered in peaceful possession and enjoyment of the suit schedule property, the decree holder never deposed an actual date and time at which the judgment debtors had

interfered in peaceful possession and enjoyment of the suit schedule property. Therefore, there is prima facie doubt as to alleged disobedience of decree of permanent injunction by the judgment debtors has claimed by the decree holder.

13. In addition, to prove the alleged willful or intentional disobedience or violation of decree of permanent injunction by the judgment debtors, there is no evidence of adjourning owners or possessors of the suit schedule property. If at all the judgment debtors has alleged in the affidavit annexed to the application and examination in chief, interfered in peaceful possession and enjoyment of the suit schedule property, there is no impediment for decree holder to examine neighboring owners of the suit schedule property to prove alleged disobedience on the part of the judgment debtors which would amounts to prima facie corroborative evidence to prove the willful or intentional interference in peaceful possession and enjoyment of the suit schedule property by the decree holder. There is no explanation forthcoming on the part of the decree holder what prevented him from examining adjourning owners of the suit schedule property to prove the alleged disobedience on the part of the judgment debtors. Failure of the decree holder to examine adjourning owners coupled with his failure to specifically state day and time on which the judgment debtors willfully interfered in peaceful possession and enjoyment of the suit schedule property, the

decree holder has fails to prove beyond reasonable doubt that the judgment debtors intentionally and willfully disobeyed or violated decree of permanent injunction in O.S.No.11/2015 on the file of this court granted in his favour. Therefore, the considered opinion of this court that, decree holder utterly fails to prove alleged violation of decree of permanent injunction in O.S.No.11/2015 beyond reasonable doubt and consequently, question of commit the judgment debtors to civil prison as contemplated U/o.21 Rule 32 of C.P.C., does not arise at all. In view of the same, point No.1 and 2 are answered in the negative.

14. **Point No.3**:- In view of the above discussions and findings, this court has proceed to pass the following.

ORDER

I.A.No.II filed U/o.XXI Rule 32 of C.P.C., is hereby dismissed.

No order as to costs.

For further steps in respect to recovery of cost of the suit call on 25-04-2025.

(Dictated to Stenographer, directly typed by him on computer, once revised, corrected and later initialed by me and then pronounced by me in the open court on this the 8th day of April -2025)

**(Sri. Janardhana. S.K.)
Civil Judge & JMFC.,
Hangal.**