

**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

Present: **Sri. Raghavendra R,**
B.A.L, LL.B.
Civil Judge and JMFC.,
Savanur.

Dated this the 16th day of July, 2015

EXECUTION PETITION NO.04/2010

Decree Holder: Mahammadhanif S/o Akbarsab Chittewale
Age: 55 years, Occ: Agriculture,
R/o Shukrawarpeth Savanur, Tq: Savanur
Dist: Haveri.

(By Sri G.G. Patil, Adv.)

Vs

Judgment Debtors: 1. Hasanasab S/o Mardanasab Doddamani
Since deaceded by his L.Rs.

1A. Saleemabi W/o Hasanasab Doddamani
Age: 55 years, Occ: House work,
R/o Zumma Bazar, Savanur,
Tq: Savanur Dist Haveri

1B. Abdulkhadar S/o Hasanasab
Doddamani, Age: 40 years, Occ:

Coolie,

R/o Zumma Bazar, Savanur,
Tq: Savanur, Dist: Haveri.

2. Hajaratsab S/o Imamasab

Tambakawale, Since deceased by
his L.Rs.

2A. Smt. Khutejabi @ Nannibu W/o
Hajarasab Tambakawale,
Age: 65 years, Occ: House work,
R/o Zumma Bazar, Tq: Savanur
Dist: Haveri

2B. Jainulla S/o Hajaratsab
Tamabakawale, Age: 47 years,
Occ: Business, R/o
Shukrawarpeth,
Savanur Tq: Savanur Dist: Haveri

2C. Shamashunsa D/o Hajaratsab
Tambakawale, Age: 42 years,
Occ: House work,
R/o Shukrawarpeth, Savanur,
Tq: Savanur Dist: Haveri

2D. Khaja S/o Hajaratsab
Tambakawale
Age: 39 Years, Occ: Business,
R/o Zumma Bazar, Savanur,
Tq: Savanur Dist: Haveri

2E. Imamhussain @ Munna
S/o Hajaratsab Tambakawale,
Age: 25 years, Occ: Business,
R/o Zumma Bazar, Savanur,
Tq: Savanur Dist: Haveri

2F. Fatimabi W/o Irshad Killedar,
Age: 45 years, Occ: Household,
R/o New Nagar (Hosanagar)
Ranebennur, District: Haveri.

Chopadar

2G. Sharafunbi W/o Mustak

Age: 40 years, Occ: Household,
R/o Lalsha katta, Savanur,
Tq: Savanur Dist: Haveri

2H. Khatunbi @ Munni W/o Mustak

Ranebennur, Age: 43 years,
Occ: House hold work,
R/o Betoona Beeti, Panaji,
State: Goa,

2I. Mansheera D/o Hajaratsab

Tambakawale, Age: 30 years,
Occ: Household work,
R/o Zumma Bazar, Savanur.
Tq: Savanur Dist: Haveri

2J. Imeenabi D/o Hajaratsab

Tambakawale, Age: 27 years,
Occ: House work,
R/o Zumma Bazar, Savanur,
Tq: Savanur Dist: Haveri

3. Ismailsab S/o Jafarsab Momin,

Age: 60 years, Occ: Agriculture,
R/o Zumma Bazar, Savanur.
Tq: Savanur Dist: Haveri

**(Judgment No.1(A), (B), 2(A) and 3 by Sri
M.S.Mudgal, Adv.)**

**(Judgment Debtor No.2 (B) to 2 (J)
Ex-parte)**

Date of institution of petition : 16.01.2010

Nature of petition : Recovery possession

Date of commencement of
recording of evidence : 17-08-2012

Date of pronouncement of
Judgment or Order. : 16-07-2015

	Year/s	Month/s	Day/s
Total duration	-05-	-06-	-00-

ORDER

The decree holder has filed this petition under order XXI rule 11 of Code of Civil Procedure for executing of Decree passed in OS NO. 82/1996 and in RA No.77/2005 for obtaining the actual possession of the suit properties from the judgment debtors.

2. The brief facts of the petition is that the decree holder has purchased the suit property through a registered sale deed from the plaintiff of OS No. 82/1996 during the pendency of the regular appeal No.77-2005 on the file of the Hon'ble Senior Civil Judge, Haveri. The appellant Court has replaced the present decree holder in the place of the respondent No.1 i.e., plaintiff of original suit. The decree holder further narrated that inspite of Court decree, the judgment debtors are not ready to handed over the suit properties. Hence, the decree holder has filed this petition for supra relief.

3. After receipt of the petition, the Court had issued a Cause notices to judgment debtors. The Judgment Debtor No.2 (B) to (J) were not appeared before the Court in spite of paper publication through wide circulated newspaper. Hence, the Court has treated these judgment debtors are placed *exparte*. The judgment debtor No.1 (A) (B), 2 (A) and 3 were appeared through the counsel. The judgment debtor No.1 (B) had filed the detailed objections and prayed to dismiss the petition with cost. The judgment debtor No.1 (B) has submitted that in the objections statement that the sale deed of the decree holder is discloses that the property measuring East West 51 feet and North South 45 feet wherein a house is shown as measuring 10 X 12. Further the property number is shown as TMC NO.131 in ward NO.3 and Block NO.2 of Savanur. But wherein the decree, the measurement of the properties are more than that what the present decree holder was purchased. Hence, the decree holder has no right to execute the decree to the entire extent. The judgment debtor No.1(B) further submits that he and judgment debtor No. 2(C) were purchased some portions of the property from the original plaintiff through a registered sale deed dated 29.9.2009. Therefore, the judgment debtor No.1 (B) prayed to dismiss the petition with costs.

4. After considering the materials on record, the Court has directed the parties to lead their respective evidence to disposal of the case. Accordingly, the decree holder had examined himself as

Pw.1 and got marked Ex.P1 to 9 and the judgment debtor No.1 B had also examined himself as Dw.1 and examined one witness as Dw.2 and got marked Ex.D1 to 5.

5. I have heard the arguments canvassed by both side counsels and perused the materials on record. The following points are arises for my consideration to disposal of the case.

- Point No.1: Whether the decree holder proves that in spite of decrees of OS No.82/1996 and RA No.77/2005, the judgment debtors are not handed over the actual possession of the suit property to him?
- Point No.2: For what order?

6. My findings to the above points are as under;

- Point No.1: In the negatively.
- Point No.2: As per final order for the following

REASONS

7. Point No.1: In order to prove the contents of the petition, the decree holder had examined himself as Pw.1 and got marked Ex.P1 to 9. The judgment debtor No.1 B had also examined himself as Dw.1 and examined one witness as Dw.2 and got marked Ex.D1 to 5 to prove the contents of the objections

statement. The details of the exhibits are given in the Annexure of this order.

8. The Pw.1 had reproduced the contents of the petition in the chief examination affidavit. The cross-examination of the Pw.1 is herewith reproduced for appreciation of evidence. The Pw.1 had deposed that “ಆಸ್ತಿ ನಂ 131 ರ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ ಪೂರ್ವ ಪಶ್ಚಿಮ 27 ಉತ್ತರ ದಕ್ಷಿಣ 31 ಇರುತ್ತದೆ. ಈ ಆಸ್ತಿಯನ್ನು ಬಿಟ್ಟು ಬೇರೆ ಆಸ್ತಿ ಖರೀದಿ ಮಾಡಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಆಸ್ತಿ ನಂ 131 ರ ಪೂರ್ವ ಪಶ್ಚಿಮ 27 ಉತ್ತರ ದಕ್ಷಿಣ 30 ಪುಟ ಮನೆ ಮತ್ತು ಹಿತ್ತಲು 45 X 18 ಇರುತ್ತದೆ. ಆಸ್ತಿ ನಂ 131ರ ಹಳೇ ನಂ 108 ಇರುತ್ತದೆ. ಅಸಲ ದಾವಾ 82-96 ರಲ್ಲಿ ಯಾವ ರೀತಿಯ ಡಿಕ್ರಿ ಆಗಿರುತ್ತದೆ ಎಂಬುದು ಗೊತ್ತಿಲ್ಲ. ಆರ ಎ ನಂ 77:2005 ರಲ್ಲಿ ಯಾವ ರೀತಿ ಆದೇಶ ಆಗಿದೆ ಎಂಬುದು ಗೊತ್ತಿಲ್ಲ. ನಾನು ಅಸಲ ದಾವೆ ಮತ್ತು ಆರಎ ನಲ್ಲಿ ಆದ ಆದೇಶದ ಪ್ರಕಾರ ಈ ಪ್ರಕರಣವನ್ನು ದಾಖಲಿಸಿರುತ್ತೇನೆ. ಚಿಕ್ಕಬಂದಿಯೋಳಿಗೆ ಎಷ್ಟು ಡಿಕ್ರಿ ಆಗಿರುತ್ತದೋ ಅಷ್ಟು ಪ್ರದೇಶಕ್ಕೆ ಈ ಪ್ರಕರಣ ದಾಖಲಿಸಿರುತ್ತೇನೆ. ನಜೀರಅಹ್ಮದ ಅಬ್ದುಲ್‌ಹಮಾನ ಮಾಲದಾರ ಜೀವಂತವಾಗಿ ಇದ್ದಾರೋ ಇಲ್ಲವೋ ಎಂಬುದು ಗೊತ್ತಿಲ್ಲ. ಸದರಿ ವ್ಯಕ್ತಿಯು ಸವಣೂರದಲ್ಲಿ ವಾಸವಾಗಿರುತ್ತಾರೆ ಅಂದರೆ ಸಾಕ್ಷಿಯು ರಾಣೆಬೆನ್ನೂರನಲ್ಲಿ ವಾಸವಾಗಿದ್ದರು ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಅಸಲ ದಾವಾ 82-96 ರಲ್ಲಿ ನಾನು ಪಕ್ಷಗಾರನಾಗಿದ್ದೆ. ನಾನು ಅಸಲದಾವೆಯಲ್ಲಿ ಪಕ್ಷಗಾರನಾಗಿದ್ದಿದ್ದರೂ ಸಹ ಸುಳ್ಳು ಸಾಕ್ಷಿ ಹೇಳುತ್ತಿದ್ದೆನೆ ಅಂದರೆ ಸರಿಯಲ್ಲ. ಆರಎ ನಂ 77-05 ರಲ್ಲಿ ಆಸ್ತಿಯನ್ನು ಖರೀದಿಸಿ ಪಕ್ಷಗಾರನಾಗಿ ಹಾಜರ ಆಗಿರುತ್ತೇನೆ. ಆರಎ ನಂ 77-05 ರಲ್ಲಿ ಮೂಲ ಮಾಲೀಕ ಎದುರುದಾರನಾಗಿ ಹಾಜರ ಆಗಿದ್ದರು ಅಂದರೆ ಸರಿ. ನಾನು ಆಸ್ತಿಯನ್ನು ಬಿಡಿಸಿಕೊಡುತ್ತೇನೆಂದು ನಜೀರಅಹ್ಮದ ಅವರಿಂದ ಮೊಕ್ತಿಯಾರ ಪತ್ರವನ್ನು ಬರೆಸಿಕೊಂಡಿರುತ್ತೇನೆ ಅಂದರೆ ಸರಿ. ಈ ರೀತಿ ನಾನು ಆರ ಎ ನಂ 77-2005 ರಲ್ಲಿ ಹಾಜರಾಗಿರುತ್ತೇನೆ ಅಂದರೆ ಸರಿ. ಆರಎ ನಂ 77-05 ನ್ನು ವಜಾ ಮಾಡಲಾಯಿತು ಅಂದರೆ ಸರಿ. ದಿ 29-9-2009 ರಂದು ಮೂಲ ಮಾಲೀಕರು ದಾವಾ ಆಸ್ತಿಯನ್ನು ಜೆಡಿಆರ್‌ನಂ 1ಬಿ ಮತ್ತು ಮೃತ ಜೆಡಿಆರ್ ನಂ 2 ರವರಿಗೆ ಮಾರಾಟ ಮಾಡಿದರು ಅಂದರೆ ಸಾಕ್ಷಿ ಗೊತ್ತಿಲ್ಲ ಎನ್ನುತ್ತಾರೆ. ಈ ಪ್ರಕರಣದಲ್ಲಿ ಶಮಶುದ್ದೀನ ತಂದೆ ಹಜರೆಸಾಬ ತಂಬಾಕವಾಲೆ ಇವರನ್ನು ಪಾರ್ಟಿ ಮಾಡಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸದರಿ ವ್ಯಕ್ತಿಯು ಆಸ್ತಿ ಸಂಖ್ಯೆ 132 ನ್ನು ಮೂಲ ಮಾಲೀಕರಾದ ನಜೀರ ಅಹ್ಮದ ಅವರಿಂದ ಖರೀದಿಸಿರುತ್ತಾರೆ ಅಂದರೆ ಸಾಕ್ಷಿ ಗೊತ್ತಿಲ್ಲ ಎನ್ನುತ್ತಾರೆ. ಅದೇ ರೀತಿಯಾಗಿ ಜೆಡಿಆರ್ 1ಬಿ ರವರು ಮೂಲ ಮಾಲೀಕರಾದ ನಜೀರಅಹ್ಮದ ಅವರಿಂದ ಆಸ್ತಿ ಸಂಖ್ಯೆ 133 ಮತ್ತು 134 ನ್ನು ಖರೀದಿಸಿರುತ್ತಾರೆ ಅಂದರೆ ಸಾಕ್ಷಿ ಗೊತ್ತಿಲ್ಲ ಎನ್ನುತ್ತಾರೆ. ಜೆಡಿಆರ್ 1ಬಿ ರವರನ್ನು ಮತ್ತೊಬ್ಬರವಾಲೆ ಎಂಬ ಅಡ್ಡಹೆಸರಿನಿಂದ ಕರೆಯುತ್ತಾರೆ ಅಂದರೆ ಸರಿಯಲ್ಲ. ಮೇಲೆ ಹೇಳಿರುವ ವ್ಯಕ್ತಿಗಳು ಖರೀದಿಸಿದ ಆಸ್ತಿಗಳಿಗೆ ಪುರಸಭೆಯಲ್ಲಿ ಖಾತೆ ಮಾಡಿಸಿಕೊಂಡಿರುತ್ತಾರೆ ಅಂದರೆ ಸಾಕ್ಷಿ ಗೊತ್ತಿಲ್ಲ ಎನ್ನುತ್ತಾರೆ. ನಾನು

ಖರೀದಿಸಿದ ಆಸ್ತಿಗೆ ಇಲ್ಲಿಯವರೆಗೂ ಪುರಸ್ಕೆಯಲ್ಲಿ ನನ್ನ ಹೆಸರು ದಾಖಲಿಸಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಪ್ರಕರಣ ಬಾಕಿ ಇರುವ ಕಾರಣ ದಾಖಲಿಸಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. 16-01-2010 ರಂದು ಈ ಪ್ರಕರಣವನ್ನು ದಾಖಲಿಸಿರುತ್ತೇನೆ ಅಂದರೆ ಸರಿ. ಈ ಪ್ರಕರಣ ದಾಖಲಿಸುವಾಗ 2010ರ ಉತ್ತರ ಪಡೆದುಕೊಂಡಿಲ್ಲ ಎಂದರೆ ಸರಿ. ನಾನು ಖರೀದಿ ಮಾಡಲಾದ ಆಸ್ತಿ ವಿಸ್ತೀರ್ಣ 10 X 12 ಒಟ್ಟು 120 ಚದರ ಅಡಿ ಇರುತ್ತದೆ ಅಂದರೆ ಸರಿ. ನಿಖರ ರಲ್ಲಿ ನಮೂದಿಸಿರುವ ವಿಸ್ತೀರ್ಣಕ್ಕೆ ನಜೀರಾಹ್ಮದರವರು ಮಾಲೀಕರಾಗಿರುತ್ತಾರೆ ಅಂದರೆ ಸರಿ. ಆಸ್ತಿ ಸಂಖ್ಯೆ 132 ರಿಂದ 134 ರ ಆಸ್ತಿಯನ್ನು ಖರೀದಿ ಮಾಡಿರುತ್ತೇನೆ ಮತ್ತು ಅದರ ಖರೀದಿ ಪತ್ರಗಳನ್ನು ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರಪಡಿಸಿರುತ್ತೇನೆ. 132 ರಿಂದ 134 ಆಸ್ತಿಗಳನ್ನು ಯಾರು ಖರೀದಿಸಿರುತ್ತಾರೆ ಎಂಬುದು ಗೊತ್ತಿಲ್ಲ. ನಾನು ಜೆಡಿಆರ್‌ಗೆ ತೊಂದರೆ ಕೊಡುವ ಉದ್ದೇಶದಿಂದ ಸುಳ್ಳು ಪ್ರಕರಣ ದಾಖಲಿಸಿ ಸುಳ್ಳು ಸಾಕ್ಷ್ಯ ಹೇಳುತ್ತಿದ್ದೆನೆ ಅಂದರೆ ಸರಿಯಲ್ಲ. ಮೂಲ ಡಿಕ್ರಿದಾರರನ್ನು ಈ ಪ್ರಕರಣದಲ್ಲಿ ಸಾಕ್ಷಿ ಮಾಡಿಸಲು ತೊಂದರೆ ಇರುವುದಿಲ್ಲ. ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ಜೆಡಿಆರ್ ರವರು ಸ್ವಾದೀನದಲ್ಲಿ ಇರುತ್ತಾರೆ ಅಂದರೆ ಸಾಕ್ಷಿಯು ಬೀಗ ಮುರಿದು ಸ್ವಾದೀನವನ್ನು ತೆಗೆದುಕೊಂಡಿರುತ್ತಾರೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. ಈ ಬಗ್ಗೆ ಪೊಲೀಸರಾಣಿಯಲ್ಲಿ ದೂರನ್ನು ಕೊಟ್ಟಿದ್ದು ಅದರ ನಂಬರ ಮತ್ತು ದಿನಾಂಕ ನೆನಪಿಲ್ಲ. ಖರೀದಿ ಕಾಗದ ಪತ್ರದ ಮೇಲೆ ನಾನು ಸುಳ್ಳು ಸಾಕ್ಷ್ಯ ಹೇಳುತ್ತಿದ್ದೆನೆ ಅಂದರೆ ಸರಿಯಲ್ಲ.”

9. The judgment debtor No.1B has also reproduced the contents of the objection statement in his chief examination affidavit. The Dw.1 has almost denied the material suggestions of the decree holder counsel in the cross-examination.

10. The witness examined by the judgment debtor No.1B has also supported the case of the judgment debtor No.1B in the chief examination. It is relevant to note that the Dw.2 is none other than the judgment debtor No.2 C in this case. He has also denied the material suggestions of the decree holder counsel in the cross-examination.

11. On perusal of the materials on record, it is relevant to note that the judgment debtor counsel much argued that the present decree holder has not power to initiate the present proceedings against the judgment debtors. On perusal of the orders of the Hon'ble Additional Senior Civil Judge, Haveri in RA No. 72-2005, it is discloses that in line four of 1st page, 1st paragraph that **“the rank of respondent No.1 as a plaintiff in trial court and during the pendency of appeal one Mahammad Haneef purchased the suit property and he is substituted in the place of respondent No.1”**. Therefore, the decree holder herein having a power to initiate the proceedings against the judgment debtors. Hence, the arguments canvassed by the judgment debtor counsel hold no water.

12. The sale deed produced by the decree holder i.e. Ex.P9 is clearly reveals that the decree holder had taken the possession of the suit property or property mentioned in the sale deed on the date of its execution itself. It means the decree holder had obtained the possession of the property mentioned in the sale on the date of its execution. The Ex.P9 further reveals that the property No.131, ward No.3 and Block No.2 is totally measuring East west 51 feet and North South 45 feet, in this extent, East west 10 feet and North South 12 feet was the tailed house. On perusal of the petition averments it is not disclosing the measurement shown in the Ex.P9. In other words, the

measurement mentioned in the petition is not all matching to the measurement mentioned in the sale deed or in Ex.P9. The Pw.1 has admitted in the cross-examination that he had purchased East west 27 and North South 31 in the property No.131, except to this extent he had not purchased any extent of property. The Pw.1 further admitted that” ನಾನು ಖರೀದಿ ಮಾಡಲಾದ ಅಸ್ತಿ ವಿಸ್ತೀರ್ಣ 10 X 12 ಒಟ್ಟು 120 ಚದರ ಅಡಿ ಇರುತ್ತದೆ ಅಂದರೆ ಸರಿ.” The version of the Pw.1 has not corroborated with documentary evidence. The Pw.1 further admitted that he does not know what were all happened in the original suit No.82-1996. The Pw.1 further admitted that he had obtained the power of attorney from the plaintiff of OS No.82-1996 by giving assurance to recovery the possession of the property and on the same strength or on the same manner he had appeared in RA No.77-2005. As I mentioned above the recitals of the Ex.P9 is clearly goes to show the decree holder had obtained the possession of the property mentioned in the sale deed on the date of its execution and also the measurement mentioned in the petition is not all comparing to the extent mentioned in the sale deed or Ex.P9. If the decree holder had obtained the possession of the property mentioned in the sale deed means seeking of actual possession of the property from the judgment debtor does not arises. The attitude of the decree holder is clearly discloses that he has come to the Court not with clean hands. The petition averments, recitals of the sale deed and version of the Pw.1 in the cross-examination is not similar. It is further relevant to note

that the original plaintiff of OS No.82-1996 has given a affidavit that he has not executed any sale deed in favour of the present decree holder. The said affidavit is marked as exhibit in this case. In overall, consideration it is appears to me that the decree holder has failed to prove the point No.1 in spite of adducing oral and documentary evidence. Hence, I answered point No.1 in the negatively.

13. Point No.2: As per following order

ORDER

The Execution petition filed by the decree holder is here by dismissed with costs.

(Directly typed and computerized by me, corrected, signed and then pronounced by me in the Open Court on this the 16th day of July, 2015.)

**(Raghavendra. R)
Civil Judge & JMFC.,
Savanur.**

A N N E X U R E

WITNESSES EXAMINED ON BEHALF OF DECREE HOLDER:

Pw1: Mahammadhanif Chittewale

DOCUMENTS MARKED ON BEHALF OF DECREE HOLDER:

Ex.P1: Certified copy of decree of OS No.82-1996
Ex.P2: Certified copy of decree in R.A.No.77/2005.
Ex.P3 to 6: Property extracts.
Ex.P7: Certified copy of judgment of OS No.82-1996
Ex.P8: Certified copy of judgment in R.A.No.77/2005
Ex.P9: Certified copy of Sale deed

WITNESSES EXAMINED ON BEHALF OF JUDGMENT DEBTOR

Dw1 : Abdulkhadar Matturawale
Dw2 : Shamashuddin Tambakawale.

DOCUMENTS MARKED ON BEHALF OF JUDGMENT DEBTOR:

Ex.D1 and 2 : Original sale deeds
Ex.D3 and 4 : Property extracts.
Ex.D5 : Affidavit.

**Civil Judge & JMFC.,
Savanur.**

WITNESSES EXAMINED ON BEHALF OF JUDGMENT DEBTOR:

Rw1: Husensab S/o Fakkeersab Bidari.

DOCUMENTS MARKED ON BEHALF OF JUDGMENT DEBTOR:

Ex.R1: Copy legal notice.

Ex.R2: Reply notice.

Ex.R3: Certified copy of order sheet in RSA No.5502/2009.

Ex.R4: Form No.B.

Ex.R5: Certified copy of final order in Ex.No.15/2005.