



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

PRESENT : **Sri. SRINIVASA. S. N,**
B.A., LL.M.,
Civil Judge and JMFC.,
Savanur.

Ex.P.NO.07/2022

Dated this 6th day of June, 2025

Decree Holder : Hanumantappa S/o Bharamappa
Bharaker @ Sunagar

Vs

Judgment Debtor: Nagappa S/o Hanamantappa Pujar

PARTIES TO IA No.V

Applicant : Smt. Savithri W/o Sannamaruthi Pujar
(Proposed Judgment
Debtor)

Vs

Opponent: : Hanumantappa S/o Bharamappa
(Decree Holder) Bharaker @ Sunagar

i	Provision under which the application is filed	U/O. 1 Rule 10(2) R/W. Sec.151 of CPC
ii	Relief sought for	To Implead as Judgment Debtor No.2
iii	The date on which the application is filed	04-04-2025
iv	Number of application	IA-V
v	The date on which the objection is filed by different opponents	25-04-2025
vi	The date on which the order was passed on the said application	06-06-2025

CJ & JMFC., Savanur



ORDERS ON IA No.V

The applicant/proposed Judgment Debtor has filed this application I.A.No.V U/O 1 Rule 10(2) R/W. Sec.151 of CPC to implead her as Judgment Debtor No.2 in the present petition, in the interest of justice and equity.

2. The applicant/proposed Judgment Debtor has sworn in an affidavit accompanying with I.A.No.V, wherein she stated that she know about the case. She contends that she is the wife of deceased defendant No.2 in O.S. No.14/2017 before this court and claims that her husband was in possession of the suit property. She contends that after his death, she succeeded to his rights and is in possession of the suit property. In the present petition, the Decree Holders have not made her party, therefore she claims that she is a necessary party to the execution petition. No harm would be caused to the Decree Holders if she is impleaded. Hence she prayed to allow the application as she is the necessary party to the suit. Hence, she prayed to implead her as Judgment Debtor No.2 by allowing the present application.

3. Per contra, the Decree Holders have filed objection to the said application and denied the contents of the affidavit. She has filed the present application only to harass and humiliate the Decree Holders. The applicant/proposed Judgment Debtor has not produced any documentary evidence in support of her claim and merely claimed that her husband was party to the original suit as such she become the necessary party to the petition. But since the original suit is for mere injunction as such right to sue



does not survives to the heirs of the deceased. Hence the question of impleadement of applicant/proposed Judgment Debtor does not arise. In O.S.No.14/2017 on the file of this court, neither the Judgment debtor nor the applicant/proposed Judgment Debtor has challenged the said decree. But the applicant/proposed Judgment Debtor are refuting the judicial decision which amounts to the contempt of court. This application is filed only to harass and trouble the Decree Holders and to prolong the matter. Hence the presence of the applicant/proposed Judgement Debtor is neither necessary nor proper for deciding the petition. Hence, the Decree Holders prays for the dismissal of the application with costs.

4. Heard the arguments of both the counsels on present application and perused the materials on record.

5. The following points have arose for my consideration;

P O I N T S

1. Whether the applicant/proposed Judgment Debtor is necessary and proper party to the petition ?
 2. What order?
6. My answers to the above points are as under;
- Point No.1: In the Negative
- Point No.2: As per the final order for the following;

R E A S O N S

7. **Point No.1:-** The present petition has been filed by the Decree Holders to execute the order passed in O.S.No.14/2017 dated 29-



08-2018 on the filed of this court against the judgment debtor in respect of the suit property and for such other reliefs.

8. Sri.V.B.T, Advocate appearing for the applicant/proposed Judgment Debtor argued that the proposed Judgment Debtor is the wife of deceased defendant No.2 in O.S. No.14/2017. Before his death the defendant No.2 was in possession of the suit property and now the applicant/proposed Judgment Debtor is in the possession of the suit property. He argued that after his death, the applicant/proposed Judgment Debtor succeeded to his rights and she is in possession of the suit property. The Decree Holders knowingly they have not made her as party to the petition, therefore she is a necessary party to the present execution petition. The Order in O.S.No.14/2017 is obtained Exparte Order. He further argued that the Decree Holders are not in possession of the suit property. E-Swattu of the suit property is not produced by the Decree Holders. No harm would be caused to the Decree Holders if she is impleaded. Therefore they prayed to allow the application as she is the necessary party to the petition and implead her as Judgment Debtor No.2 by allowing the present application.

9. Sri.S.S.H, Advocate appearing for the Decree Holders argued that the O.S.No.14/2017 is decreed in favour of the Decree Holders. No appeal or stay against the above said order. He argued that why the applicant/proposed Judgment Debtor has not moved the application in original suit itself. If she is in the possession of the suit property, she has every right to file declaration of title and permanent injunction suit to protect her



title and possession. She has not produced any documents in regard of the same. He further argued that the decree in O.S.No.14/2017 is passed right in personam not right in rem, meaning it applies only to the parties to the suit and not to others. Therefore the right to sue does not survives to the heirs of the deceased. He argued that the decree holders are in the possession of the suit property. As per section 47 of the CPC, the court should not go beyond the decree. Therefore, the presence of the applicant/proposed Judgment Debtor is neither necessary nor proper for deciding the petition. Hence, he prays for the dismissal of the application with costs.

10. The Decree Holders' counsel relied on the following decisions:-

- (1). Judgment of Hon'ble Himachal Pradesh High Court reported in 1990 SCC Online HP 25, in OMP No.378 of 1989 in Execution Petition No.10 of 1985 dated 13-09-1990 in the case of State Bank of Patiala Vs. M/s. Alpna Industries and others, wherein the Hon'ble Court has held that.-

“In the first instance, Order 1, Rule 10 of the Civil Procedure Code, is applicable only during the proceedings in a suit. Such powers under Order 1, Rule 10 sub-rule (2) can only be exercised when the proceedings are alive and still pending. Thus once the adjudication itself of all the disputes in the case is over, this provision cannot be made use of by any party”



(2). Judgment of Hon'ble High Court of Karnataka reported in 2024:KHC-K:1826 in WP 200652 of 2024 dated 29-02-2024 in the case of Fahad Ahmed Vs. Salman Shabana and others, wherein the Hon'ble Court has held that.-

"8. If any independent right is sought to be adjudicated, not calcimining under the judgment debtor by any person, he must resort to an application under Order 21 Rule 97 and Rule 100 of CPC and the same needs to be considered as per the Rule 101 of Order 21 of CPC.

9. Except the said provision, no other application by a third party is maintainable before the executing Court. Therefore, dismissal of the application by order vide Annexure-J by the Executing Court in E.P.539/2022dated 31.01.2024 is perfectly justified."

11. Further, expressing any other opinion on the merits of the matter would definitely hamper the right of the parties. Therefore, this Court resists from expressing any further opinion of the matter. Accordingly, the writ petition needs to be dismissed.

12. On careful observation of the pleadings, arguments and documents, the decree passed in O.S. No.14/2017 by this court is for permanent injunction, which is a personal relief granted against the defendants in that suit, restraining them from interfering with the plaintiff's peaceful possession. Such a decree



operates as a right in personam and does not bind third parties who were not party to the suit.

13. In a suit for injunction, which is not based on title or ownership but on possession and apprehension of interference, the right to sue does not survive to the legal representatives. The impleadment under Order I Rule 10(2) CPC is allowed only when the applicant's presence is necessary for effective adjudication. In execution of a decree for injunction, the legal representative of a deceased defendant, if not interfering, has no role.

14. The applicant/proposed Judgment Debtor claim that she is in possession of the suit property, even if assumed to be true, does not entitle her to be impleaded in an execution petition of a decree, in which she was not party to. If she claims independent rights, she has appropriate remedies under law such as filing a separate suit for declaration and injunction. Section 47 of CPC restricts the scope of the executing court to executing the decree as it stands. The court cannot modify or enlarge the scope of the decree by impleading third parties who were not originally part of the suit. The applicant/proposed Judgment Debtor was aware of the decree but did not challenge it. She also did not seek impleadment at the suit stage. Her conduct suggests the application is filed belatedly with an intention to delay execution. Therefore, this Court is of the view that the applicant/proposed Judgment Debtor is not a necessary or proper party to the execution petition, and her rights, if any, cannot be adjudicated in execution and not by obstructing execution of a valid decree. The



court is bound to execute the decree as it is, without going beyond its terms.

15. Under Order I Rule 10(2) of CPC, a person may be impleaded in a suit only if:

- a) They are a necessary party (i.e., the suit cannot be decided without their presence), or
- b) They are a proper party (i.e., their presence is necessary to enable the court to completely and effectively adjudicate the dispute).

16. As per settled law, execution proceedings are limited to enforcing the decree as it stands. The executing court cannot go beyond the decree or enlarge its scope by adding new parties who were not originally impleaded. Hence, the applicant/proposed Judgment Debtor is neither necessary nor proper party to the petition. For the above said reasons and observations, I answered the ***point No.1 in the Negative.***

17. Point No.2:- For the foregoing reasons, I proceed to pass the following;

ORDER

**I.A.No.V filed U/O 1 Rule 10(2) r/w Section
151 of CPC, by the applicant/proposed
Judgment Debtor is hereby dismissed.**

(Dictated to stenographer on computer, corrected, signed and then pronounced by me in the open court on this the 6th day of June, 2025)

(Srinivasa.S.N.,)
CJ & JMFC., Savanur.