



**IN THE COURT OF THE SENIOR CIVIL JUDGE  
AND J.M.F.C., SHIGGOAN**

**Present: Sri. Sunil S. Talawar**  
**B.A.LLB..., (Spl.)**  
**Senior Civil Judge & J.M.F.C**  
**Shiggaon.**

DATED THIS THE 15<sup>th</sup> DAY OF NOVEMBER 2025

**Ex.No.39/2017**

Decree Holders: Jaykirhusen S/o  
Mahammadhusen @  
Babahusen Jahangir

**Vs**

Judgment Debtors : Parameshwarapp S/o  
Mahadevappa Kundagol

**I.A.IV/2025**

Applicants: 1. Ningappa S/o Mahadevappa  
Kundagol  
2. Manjunath S/o  
Mahadevappa Kundagol

**Vs.**

Opponents: Jaykirhusen S/o Mahammadhusen  
@ Babahusen Jahangir

**ORDER ON I.A.NO.IV**

The applicants/objectors have filed this application under Order XXI Rule 97 R/w Sec.151 of CPC, seeking order to decide their right, title

KAHV710006412017



interest in the suit property involved in the judgment and decree passed in O.S.No.75/2013 on the file of Additional Senior Civil Judge Haveri and now called as Senior Civil Judge Sitting At Savanur by determining the legality and validity and executability of this decree.

2) In the annexed sworn affidavit, the applicant has stated that the land R.S.No.15 measuring 14 acres 36 guntas situated at Choudal village in Savanur taluka is ancestral property. They are having right title interest over the suit property but Judgment debtor in collusion with the decree holder filed O.S.No.75/2013 and deliberately not contested the matter and obtained the collusive decree. Based on the said collusive decree Decree holder filed this execution petition and in collusion with the Judgment debtor got registered sale deed through the court. Applicants and their father Mahadevappa Kundagol are in actual possession and vahiwat of the suit property. Further it is stated that, recently I Decree holder came to the suit property and tried to take the possession and made obstruction to his possession and threaten that he is the owner of the suit

KAHV710006412017



property by showing revenue records. Thereafter applicant has obtained the revenue records and came to know that Decree holder has got executed the decree through the court. Judgment debtor Parameshappa Kundagol is not sole owner of the suit property. This property is valuable property and already final decree proceedings is pending in this regard. Hence, judgment and decree obtained in O.S.No.75/2013 is not binding on decree holders right, title and interest on the suit property. Decree-holders are having independent right over the suit property. Hence, it is necessary to determine legality, validity and executability of the judgment and decree passed in O.S.No.75/2013. If the court is not decided the legality, validity of the decree and right title and interest over the suit property objectors will put into hardship. Therefore the objectors have prayed to decide their right, title and interest over the suit property which is involved in the judgment and decree passed in O.S.No.75/2013 by determining the legality and validity and executability of this decree.

3) The decree-holder has filed objections to I.A.No.IV wherein he has contending that the



application is beyond the scope and ambit of Order XXI, Rule 58 and 97 R/w Sec.151 of CPC. Therefore, the present application of objectors is not maintainable. The contents of sworn affidavit of objector are all false and the said facts are not made applicable when it looked into the law. It is also contended that the objectors with the help of Judgment debtor are intending to drag on the matter. It is denied by the decree holder that in O.S.No.75/2013 the decree-holder and Judgment Debtor have obtained decree colluding with each other in order to deprive the valuable rights of the objectors. It is also stated that, the decree obtained by the objectors is not within the knowledge of decree-holders. Therefore, prayed to reject the application with cost of Rs.5,000/-.

4) After recording the objections of the decree-holder and upon going through the application of objectors, the enquiry is held by this court. As result of it the objectors have stepped into witness box and examined as R.W.1 and got marked Ex.R.1 to R.4 documents. On behalf of objectors the witness by name Ningappa Kundagol, Parshuram Gouler, Mahadevappa Yalaragi have

KAHV710006412017



been examined as R.W.2 to 4. ON the other hand the decree-holder did not step into witness box.

5) I have the arguments of Sri S.R.Hedgde learned advocate for objector and so also heard Sri.A.A.G., learned advocate for decree holder. The learned advocate for objectors has relied upon the decision report in *JT 2000 (7) SC 502, AIR 2002 SC 3080, ILR 2004 (1) Kar 705 and KCCR 2009 (1) Kar 2759.*

6) Perused the entire records.

7) The points that arose for my consideration are:

**1) Whether the applicants /objectors have made out grounds for allowing the application filed under Order XXI Rule 97 that to the determining the legality and validity and executability of decree passed in O.S.No.75/2013?**

**2) What Order?**



8) My answers to the above points are as follows:

***Point No.1 : In the Negative***

***Point No.2 : As per final Order,  
for the following:-***

**REASONS**

9) **POINT No.1:** Before entering into the heart of present petition I would like to discuss the relevant fact in relation to the present execution petition. This is execution petition arising out of the judgment and decree passed in O.S.No.75/2013 on the file of Additional Senior Civil Judge and JMFC Haveri seeking order to execute the registered sale deed in respect of suit property the Southern portion of 10 acres 00 guntas out of 14 acres 38 guntas in Sy.No.15 situated at Chavadal village. As per the terms of decree passed in O.S.No.75/2013 the defendant No.1 being directed to execute the registered sale deed pertaining to above said property by receiving balance sale consideration amount of Rs.1,00,000/- within a period of one month. Therefore, in order to execute the said decree the judgment debtor is before this court by filing execution petition.



10) After institution of execution petition the sale proceedings being adjudicated and the present objectors appeared before this court by filing present application. The objectors have questioned the legality of judgment passed in O.S.No.75/2013 by stating that it cannot be executable decree as the suit subject property is ancestral property . The main contention of judgment debtor is that the decree passed in O.S.No.75/2013 is a collusive decree. It is also contention of objectors that they are in actual possession of suit property. It is also contended that the property is valuable property and for which the final decree proceedings is pending before the court. hence the decree passed in O.S.No.75/2013 is not executable decree. The objectors have also prayed to decide the rights of objectors in respect of subject suit property.

11) In order to substantiate their objections in relation to execute the decree the objector No.2 stepped into witness box and examined as R.W.1 and got marked Ex.R.1 to R.4 documents. The objector No.2 has reiterated entire contents of application in his affidavit. In order to substantiate his objections the R.W.1 has produced certified

KAHV710006412017



copy of judgment and decree in original suit No.21/2020 which is marked as Ex.R.4. Upon perusal of Ex.R.4 it appears that, the judgment debtor No.3 to 4 have initiated suit for partition and separate possession against judgment debtor No.1 and all others. The said suit came to be decreed on 07.01.2022 decreeing the suit that the judgment debtor No.2 to 4 are having 1/7th share each in the suit property. It is pertinent to note here that, on perusal of the decree passed in the said suit the land Sy.No.15 is also one of the suit property. The said land Sy.No.15 is the subject matter of present execution petition also. Here, on perusal of the Ex.R.4 it appears that there is a judgment and decree in respect of subject matter of this execution petition. It also appears that on the said judgment, the judgment debtor No.2 to 4 have also initiated FDP proceedings. Ex.R.2 and R.3 are the certified copies of order sheet in FDP No.10/2022 and certified copy of petition. Upon perusal of the Ex.R.2 and R.3 the judgment debtor No.2 to 4 have applied for scheme for partition among the parties by filing FDP proceedings. The objectors have also produced Ex.R.1 which pertains to the D.No.876 which was certified on the

KAHV710006412017



basis of varasa mutation entry. Upon perusal of the Ex.R.1 it appears that one Yallappa Ramappa Kundagol reported died on 18.06.1962 at Chavadal village and his sons Parasappa, Ramanna, Gurappa and his own brother Shivappa, Mahadevappa had acquired the properties by succession. It is pertinent note that, the subject matter of present execution petition Sy.No.15 is also one of the property mentioned in Ex.R.1 document. Upon perusal of all these documents they all make clear that the judgment debtor No.2 to 4 have filed suit for partition in respect of subject matter land and obtained decree from this court and the FDP proceedings pending for adjudication. However, the all proceedings before this court relied by the objectors are related to of the year 2022 and this execution petition has been filed decree holder on 14.06.2017.

12) The objectors have questioned the legality of judgment passed in O.S.No.75/2013. Therefore, without going through the terms of decree passed in O.S.No.75/2013 it cannot be held possible to decide the application of objectors and hence I would like to discuss the terms of the



decree passed in O.S.No.75/2013. The said O.S.No.75/2013 is being initiated by the present decree-holder against judgment debtor No.1 to 4. The said suit being adjudicated on merits by recording evidence. The learned advocate for decree-holder has produced certified copy of judgment passed in O.S.No.75/2013. Upon perusal of the said document it appears that the judgment debtor No.1 being represented by Sri P.R.Munjoji advocate and judgment debtor No.2 to 4 being represented by Sri V.S.Konanahalli Advocate. The decree-holder has filed that suit for specific performance of contract in respect of subject suit property. It is pertinent to note that the defendant No.1 / judgment debtor No.1 and defendant No.2 to 4 / judgment debtor No.2 to 4 have filed their separate written statement contesting the suit. By recording reasonings on the real lis between the parties this court decreed the suit with cost directing the defendant No.1 to execute registered sale deed pertaining to suit property by receiving balance sale consideration of Rs.1,00,000/- within a period of 1 month. It is admitted fact that, the judgment in O.S.No.75/2013 was delivered on 26.04.2017. It is also admitted fact that there is no



appeal prepared by the judgment debtor No.1 to 4 against the decree. Therefore, the judgment and decree passed in O.S.No.75/2013 has attained its finality. The judgment debtor No.1 to 4 are also admitting the said fact. Now the decree holder is before this court seeking execution of the decree passed in O.S.No.75/2013.

13) As the proceedings in O.S.No.75/2013 is discussed herein above I would like to discuss the objectors right towards the subject suit property. Before that it is pertinent to note that the judgment debtor No.1 to 4 are non other than the defendants No.1 to 4 in O.S.No.75/2013. That is why the objectors are stating that the decree passed in O.S.No.75/2013 is a collusive decree in order to deprive their valuable right. Here, the objectors are shri Ningappa S/o Mahadevappa Kundagol and Manjunath S/o Mahadevappa Kundagol. The status of these objectors in O.S.No.21/2020 is defendants No.3 and 4. No doubt that these objectors are not the parties to the suit bearing O.S.No.75/2013. But here the judgment debtor No.2 to 4 are the plaintiffs and judgment debtor No.1 is the defendant in O.S.No.21/2020.

KAHV710006412017



Therefore, the judgment debtor No.1 to 4 are having better knowledge of the decree passed in O.S.No.75/2013 in the year 2017 itself. As because the judgment in O.S.No.75/2013 was delivered against them on 26.04.2017. The judgment debtor NO.2 to 4 have filed Original Suit No.21/2020 that to before this court seeking the relief of partition and separate possession in respect of subject suit property. Whether these judgment debtor No. 2 to 4 have approached with a clean hand is material fact as to decide this application. In this regard Ex.R.4 is the judgment and the facts of the plaintiffs case which is extracted in judgment are as such the judgment debtor No.2 to 4 claims suit properties as joint family properties and all other defendants refused to give their legitimate share. When the defendants refused to give share they have constrained to file suit against the defendants. It is pertinent to note that, the judgment debtor No.2 to 4 have not at all whispered any thing about the earlier suit being adjudicated in respect of subject suit property and they have kept it in dark without saying anything about original suit No.75/2013. The judgment debtor No.2 being one of the defendant in

KAHV710006412017



O.S.No.21/2020 has also kept it in dark. Therefore, if the judgment debtor No.2 to 4 have stated about the earlier suit being adjudicated among themselves then the matter would be different as related to subject suit property. Because on the day when the judgment was delivered in O.S.No.75/2013 the decree-holder has created legal right over the subject suit property as the court directed to the judgment debtor to execute final sale deed in respect of subject suit property. How can the judgment debtor No.2 to 4 file such suit for partition without whispering the earlier court order and without impleading the decree-holder as one of the parties to the suit. The entire proceedings in O.S.No.21/2020 was based upon the material facts given by judgment debtor No.2 to 4 without whispering the right of decree-holder in respect of subject suit property. It is pertinent to note that, the original suit No.21/2020 was disposed on 07.01.2022 that to during pendency of this execution petition. If the judgment debtor No.2 to 4 have made this decree-holder as one of the party to the suit then also the matter would be different as rightly the judgment debtor could have objected to decree the suit in respect of subject suit

KAHV710006412017



property. But it has not been done by the judgment debtor No.2 to 4. The entire proceedings of O.S.No.21/2020 is one sided one in respect of subject suit property. Therefore, the judgment debtor No.1 to 4 cannot say that the decree passed in O.S.No.75/2013 is illegal and not binding on them and the same decree is not executable one. This view of mine is supported by the fact that, the operation of judgment and decree passed in original suit No.75/2013 was in operation as on the date of decree passed in O.S.No.21/2020. The conflicting judgment was delivered in O.S.No.21/2020 as result of mis representation by the judgment debtor No.2 to 4 by hiding relevant fact in relation to subject suit property. The conduct of judgment debtor No.2 to 4 is as such they wanted to deprive the right of decree-holder by filing original suit No.21/2020 with the help of the objectors. The objectors in the present matter cannot rely their right over the subject suit property based on the decree passed in O.S.No.21/2020. The relied documents Ex.R.2, 3 the proceedings in FDP No.10/2022 are not reliable documents for the all above simple reasons that the judgment debtor No.2 to 4 have obtained



decree by playing fraud and misrepresentation in respect of subject suit property.

14) The learned advocate for objector would argue the matter by placing decision report in **(2000) 7 JT 502 Prashanth Banerji Vs. Pushpa Ashoke Chandani and Others, AIR 2000 SC 3080 Tanzeem-E-Sufia Vs. Bibi Haliman and Others, ILR 2004 (1) Kar 705 C. Somegouda Vs. C.Rangarao and Others and KCCR 2009 (1) Kar 2759 S.S.M. and sons Bangalore VS. Nanjamma Since deceased by Lrs and others** and submitted that order XXI Rule 97 is maintainable when appellant filed application in respect of same property and 3<sup>rd</sup> party claiming in different rights and also the stranger objector can claim an independent right, title and interest in the decretal property. The learned advocate for objector relied upon the factual matrix of the present matter by relying upon the judgment and decree passed in O.S.No.21/2020 and also the FDP No.10/2022. The learned advocate for objector argued the matter that the objectors have created their independent right over the subject suit property hence the decree passed in



O.S.No.75/2013 became unexecutable decree. With due respect to the decision relied by learned advocate for objector the present matter is as such there is already decree in O.S.No.75/2013 which directs the defendant No.1 to execute final sale deed in respect of subject suit property. If at all the objectors have any grievance with the decree passed in O.S.No.75/2013 then they ought to have prefer appeal against the judgment. On the other hand the judgment debtor No.1 to 4 have not at all challenged the said decree passed in O.S.No.75/2013 since the date on judgment delivered till to filing of O.S.No.21/2020 they kept mum for more than 5 years and filed such suit for partition and separate possession. The filing of O.S.No.21/2020 became after thought of judgment debtor No.1 to 4 in order to escape from execution of the decree. The intention behind filing O.S.No.21/2020 is very clear that the judgment debtor No.1 to 4 without whispering the decree passed in O.S.No.75/2013 obtained decree. Moreover the present decree-holder is not a party to the O.S.No.21/2020 hence the decree passed in that suit is not binding on the right of judgment debtor in lieu of judgment passed in



O.S.No.75/2013. Therefore the objectors cannot say that the decree passed in O.S.No.75/2013 is not executable decree. Therefore, the relied decision are not made applicable to the present case on hand.

15) The learned advocate for objector has also relied upon the Ex.R.1 the D.No.876 and submitted that the subject suit property is joint family property. The judgment debtor No.1 to 4 and objectors are estopped as per **Section 115 of Indian Evidence Act** to place such document that to after passing judgment in O.S.No.75/2013. If the judgment debtor No.1 to 4 are placed this document in O.S.No.75/2013 with a specific contention that the subject suit property is joint family property and the judgment debtor No.1 has acted beyond the scope or welfare of joint family and hence the relied agreement for sale is not binding on them. But it has not been done in the O.S.No.75/2013 though the objectors are relying Ex.R.1 document. The Ex.R.1 document itself is not sufficient to hold that the decree passed in O.S.No.75/2013 is not executable decree. As the materials of this case show that the operation of



decree passed in O.S.No.75/2013 is till in operation then no grounds made out that of the said decree is illegal and not binding on the objectors. The objectors have adduced evidence of R.W.2 to 4 in order to prove their contentions but here there are two judgments made available by the parties and upon going through them the all documentary evidence prevail over the oral evidence of parties. The possession of suit property is immaterial to decide objectors claim as this execution petition is for registration of final sale deed and already registration process being completed. Therefore, looking to the materials placed by the objectors and upon going through the judgment in O.S.No.75/2013 there is no legal strength on the application of objectors and there are no such grounds made out as to allow the application of objectors. Meaning thereby the objectors application need to be rejected with cost.

Therefore, considering all these aspects,  
I answer Point No.1 is in the Negative.

16) **POINT No.2:** For the aforesaid reasons and finding on Point No.1, I proceed to pass the following;



**ORDER**

***I.A.No.IV filed by the  
objectors Sri Ningappa S/o  
Mahadevappa Kundagol  
and Manjunath S/o  
Mahadevappa Kundagol  
under Order XXI Rule 97 R/  
w Sec.151 of CPC is hereby  
dismissed with cost of  
Rs.2,500/-.***

*(Dictated to the Stenographer, typed by him, revised and corrected by me  
and then pronounced in the open court on this the 15<sup>th</sup> day of November -  
2025)*

**(Sunil. S. Talawar)  
Senior Civil Judge & JMFC  
Shiggaon**

**ANNEXURE**

**List of Witnesses examined on behalf of the**

**Objectors:**

- R.W.1: Manjunath S/o Mahadevappa Kundagol  
R.W.2: Ningappa S/o Mahadevappa Kundagol  
R.W.3: Parashuram S/o Rurappa Gouler  
R.W.4: Mahadevappa S/o Neelappa Yalavigi

**List of Documents marked on behalf of the**

**Objectors:**

- Ex.R.1: Certified copy of D.No.876

KAHV710006412017



Ex.R.2: Certified copy of order sheet of FDP  
No.10/2022

Ex.R.3: Certified copy of FDP No.10/2022

Ex.R.4: Certified copy of judgment and decree of  
O.S.No.21/2020

**List of Witnesses examined on behalf of the DHR:**

NIL

**List of Documents marked on behalf of the DHR:**

NIL

**Senior Civil Judge & JMFC  
Shiggaon**

KAHV710006412017

