

KAMD300001322026



**IN THE COURT OF THE I-ADDITIONAL SENIOR
CIVIL JUDGE AND JMFC, MADDUR**

PRESENT : *MOHANAKUMARI N.B., L.L.M.*
I-ADDITIONAL SENIOR CIVIL JUDGE AND JMFC,
MADDUR, MANDYA DISTRICT

DATED: THIS THE 23rd DAY OF JUNE 2026

R.A. No.12/2026

	M.N. Chandrashekar S/o Nanjundaiah, Aged about 60 years, R/at Sri Chamundi Krupa, Near Madduramma Temple, B.M. Road, Maddur Town, Mandya District.
	APPELLANT
	(Decree holder before the Trial Court)
	(Represented by Sri. HB/GM., Adv.,)

V/s.

1	Lakshmamma D/o Late Nanjaiah W/o L.Nagaraju, Aged about 56 years, R/at Door No. B-2/1, Vasu Layout, 9th Cross, Ramakrishna Nagara, Myosre 570 022.
2	Ningamma, W/o Late Nanjaiah, Aged about Syears,
3	Shivarajegowda, S/o Late Nanjaiah, Aged about 54 years,
	Respondent 2 and 3 are R/at TMC Mariyappa's House, 3rd Cross, Leelavathi Extension, Maddur 571 428.
4	S. Ravi, S/o Late Nanjaiah, Aged about 50years, R/at 2nd Cross, Sir M.V.Nagar, Maddur Town, Maddur- 571 428.
	RESPONDENTS
	(Judgment Debtors/Applicants before the Trial Court)
	(Respondents represented by Sri. SJ.,)

Date of institution of Appeal	Filed on 12.02.2026
Date and nature of impugned order.	order dated 02.02.2026 in Ex.No.20/2009 passed by learned I Addl. Civil Judge and JMFC, Maddur, decreed the suit of Petitioners.
Date of pronouncement of Judgment	23.06.2026
Total Duration	<u>Year/s</u> <u>Month/s</u> <u>Day/s</u> 00 04 11

J U D G M E N T

This appeal is preferred under order 41 rule 1 read with section 96 of CPC against the order passed by the learned I Addl. Civil Judge and JMFC, Maddur dated 02.02.2026 in Ex.No.20/2009 on interim application filed by the respondent No.1 under order 21 rule 96 to 98 and 101 of CPC.

2. The respondent No.1 as objector filed IA No.13 before the executing court under order 21 rule 96 to 98 and 101 R/W/S of CPC to pass on order to adjudicate her right over the execution schedule property to the extent of her share. In

the affidavit filed to the application, it is stated that JDR No.1 is her mother, JDR NO.2 and 3 are her brothers. She had filed suit against the JDR No.1 to 3 in OS No.306/2010 for partition and separate possession. At that time, the JDRs gave assurance to her that they will give her share in the execution schedule property. Therefore, she could not appear before the court to prosecute the suit. As a result, the suit came to be dismissed on 08.01.2016 for default and for non prosecution. She came to know that the JDRs by colluding with DHR created agreement of sale in favour of the DHR. The DHR obtained exparte decree against the JDRs. On the said decree, the DHR filed execution case and got executed sale deed through court commissioner. The JDRs have not resisted the execution proceedings also. The execution schedule property is joint family property. The applicant is also a co-parcener and a co-sharer along with JDRs. They are in joint

possession and enjoyment of the property. The applicant got 1/3rd share in the execution schedule property. The applicant has again filed suit for partition and separate possession explaining the reasons for dismissal of her earlier suit for non-prosecution. She has got vested share in the execution schedule property. Therefore, she filed application to pass an order to adjudicate her right to an extent of her share in the execution schedule property.

3. The DHR filed objection to the application and stated that the JDRs have set up the applicant to file the application with malafide intention. Any persons other than Judgment Debtor is dispossessed of immovable property by the DHR or by the purchaser can maintain application under rule 99 of order 21 of CPC. The applicant does not come within the said definition. Order 21 rule 101 of CPC is applicable to the parties who comes within the definition of rule 97

and rule 99. The applicant does not come either under rule 97 or rule 99 of order 21. The father of the applicant executed registered agreement of sale in favour of DHR on 01.03.2006. But he failed to execute sale deed as agreed. The DHR issued notice dated 09.02.2007 demanding execution of sale deed. Thereafter, the father of the applicant died. The DHR again issued to notice to JDRs No.1 to 3 on 24.11.2007 and 08.08.2008 demanding execution of sale deed. They did not come forward to execute sale deed. The father of the applicant and JDRs No.1 to 3 did not disclose about the existence of the applicant. The DHR filed OS No.306/2008 against JDRs No.1 to 3 for decree for specific performance of contract. The JDRs failed to appear before the court. The suit came to be decreed. The DHR filed execution petition 20/2009. The JDRs failed to appear before the court. The court appointed court commissioner and got executed sale deed in

favour of DHR. The JDRs No.1 to 3 filed Misc. petition Nos.14/2009 and 6/2010. The said petitions were dismissed on 31.03.2016. They preferred MFA No.4025/2016 before the Hon'ble High court of Karnataka. They have withdrawn the same. They filed MA No.4/2018 before the Hon'ble Senior Civil Judge, Maddur and the same is dismissed. They have filed writ petition No.4489/2019 and writ petition No.14491/2019. Both petitions were disposed of. They filed writ petition No.9026/2021 and it is also disposed of. The applicant has knowledge about the execution proceedings since from 2009. She has not approached the executing court with clean hands. She has no manner of right over execution schedule property. It was the absolute and self-acquired property of her father. The application is not maintainable as it is barred by limitation. Therefore, it is prayed to dismiss the application.

4. In view of the above pleadings, the Trial Court framed the following;

POINT

Whether the applicant has made out any sufficient ground for allow this application?

5. During the course of trial, the objector is examined as OW1 and got marked 14 documents as Ex.O1 to O14. The DHR is examined as PW1.

6. After considering and appreciating the evidence and materials on record, the executing Court allowed the application vide order dated 02.02.2026 by answering above point in the affirmative and by holding that the decree itself is not maintainable.

7. Aggrieved by the said order dated 02.02.2026 passed by the learned I Addl. Civil

Judge and JMFC, Maddur, the decree holder has preferred this appeal.

8. The Appellants/Decree holder has urged in the grounds of appeal that the Trial court has erred in allowing the application even though the respondent No.1 has failed to prove her case in the manner known to law. The Trial court has erred in not framing legal points for determination having regard to the nature of the proceedings and also stage of the execution case. The Trial Court is legally expected to raise all the relevant points for determination within the meaning of order 21 rules 96 to 98 and 101 of CPC. The application filed by respondent No.1 should not have been considered as an interim application. Any application filed under order 21 rule 96 to 98 of CPC should be treated as main petition and should be considered as independent main petition. The Trial Court erred in not considering relevant and legal objections

raised by the Appellant and also evidence adduced by him. The Trial Court erred in not properly understanding the scope of order 21 rule 96 to 98 of CPC. The alleged right of the respondent No.1 is not alive in view of judgment and decree obtained by the decree holder. It is impermissible at this stage to entertain in such application. The application filed by the respondent No.1 is not only barred by time but also barred by law of estoppel, res-judicata and opposed to well settled principles of law. The Trial Court erred in not looking into the evidence adduced by the Appellant and also his cross examination to the respondent No.1. The Trial Court wrongly held that no evidence is let by the Appellant. The Trial Court failed to appreciate that the facts narrated by respondent No.1 in her application do not attract the provision of law under which application is filed. The respondent No.1 cannot

be called as objector under law. The Trial Court failed to appreciate that there is a suit filed by the respondent No.1 in O.S. No. 477/2023 on the file of learned Prl. Civil Judge and JMFC, Maddur for partition and separate possession, which is pending. The Appellant herein is defendant No.4 in the said suit. The respondent No.1 herein has claimed for partition and separate possession of her 1/4th share and also claimed mesne profit. Therefore, the application filed by the respondent No.1 under order 21 rules 96 to 98 of CPC is not maintainable. The Trial Court erred in not considering that there was a suit filed by the respondent No.1 in O.S. No. 306/2010 against the Appellant and other respondents for partition and separate possession, which is dismissed on 08.01.2016. The application filed by the Appellant is not only barred under law but also barred by limitation. The Trial Court erred in making an observation

that the respondent No.1 is not made as party in the suit filed by the Appellant for specific performance of contract. The entire estate of the father of respondent No.1 was represented by other respondents, who were defendants in the said suit. In view of non-challenging of the judgment and decree passed in favour of the Appellant, the application filed by the respondent No.1 is barred by estoppel, conduct and acquiescence. It is incorrect on the part of the Trial Court to make an observation that the Appellant has obtained the decree for specific performance of contract by hiding the truth. It is also incorrect on the part of the Trial court to make an observation that the decree obtained by the Appellant itself is not maintainable. The said observation is without jurisdiction and authority on the part of the Trial Court. The decree for specific performance of contract is duly executed by executing sale deed in favour

of the Appellant through court commissioner. Therefore, it is not permissible to state that the decree is not maintainable. The executing court is bound by the decree and cannot go beyond the decree. The observation made Trial court and conclusions arrived by the Trial Court are erroneous, contrary to the facts, evidence and law applicable to the case. Therefore, it is prayed to set a side the order dated 02.02.2026 passed by the 1st Addl. Civil Judge and JMFC, Maddur in execution No.20/2009 on application filed by the respondent No.1 under order 21 rule 96 to 98 and 101 of R/W/S 151 of CPC and prayed to dismiss the application filed by the respondent No.1.

9. Having considered the pleadings, evidence on record, the impugned order, the grounds urged in the appeal and arguments, the following point has been formulated for consideration:

1) Whether the impugned order is perverse, capricious and it warrants interference by this court?

10. Having heard appellant arguments and having perused the written arguments filed by appellant and having considered the materials on record, the aforementioned point is answered ***in the Affirmative for the following;***

: REASONS :

11. This appeal is filed by the DHR in execution No.20/2009 challenging the order passed by the executing court on the application filed by the respondent No.1 as objector under order 21 rule 96 to 98 and 101 of R/W/S CPC. The respondent No.1 herein filed the said application to pass an order to adjudicate her right to an extent of her share in the execution schedule property. The said application is objected by the DHR. The Trial Court conducted the enquiry on application and allowed the application on

merits through its order dated 02.02.2026.

12. On perusal of the materials available on record, it is forthcoming that the Appellant herein obtained decree for specific performance of contract in OS No.312/2008 on the execution schedule property. He filed execution No.20/2009 for execution of decree for specific performance of contract against the respondent No.2 to 4 herein. He got executed sale deed in his favour through court commissioner in terms of decree. Thereafter, he filed application for delivery of possession of the execution schedule property. At that time, the present application is filed by the respondent No.1 under order 21 rule 96 to 98 and 101 of R/W/S 151 of CPC. In the application the applicant has prayed to pass an order to adjudicate her right in the execution schedule property to an extent of her share. Any order passed on the application filed under order 21

rule 98 or rule 101 of CPC shall be treated as decree as per Rule 103 of Order 21 of CPC. Therefore, the executing court should have framed issue or point for consideration in respect of right of the respondent No.1. But, it has raised point for consideration about grounds to allow the application. In the order passed the executing court right of respondent No.1 is not adjudicated.

13. As admitted by both the parties, suit filed by the respondent No.1 herein in OS No.306/2010 for partition and separate possession against the respondent No.2 to 4 and appellant is dismissed for default and non-prosecution on 08.01.2016. Thereafter, the applicant here again filed OS No.477/2023 before the learned Prl. Civil Judge and JMFC, Maddur for partition and separate possession against the respondent No.2 to 4 and Appellant. The said suit is pending. In view of dismissal of

earlier suit for default and pendency of OS No.477/2023 for partition and separate possession, question of adjudicating the right of the respondent No.1 in execution petition No.20/2009 before the executing court does not arise. The Trial Court in its order simply allowed the application. The Trial Court has not adjudicated anything about the alleged right of the applicant.

14. The respondent No.1 in the application filed before the executing court has sought for passing an order to adjudicate her claim in the execution schedule property in respect of her share. Therefore, the entire execution proceedings cannot be said to be not maintainable. It is the case of the respondent No.1 that the execution schedule property was joint family property and she has got share as co-parcener and co-sharer. On the other hand,

the DHR contended that it was absolute property of the father of the respondent No.1. Whatever may be the nature of execution schedule property, since the suit for specific performance of contract was filed by the DHR after the death of the father of the respondent No.1, the respondent No.1 was a necessary party to the suit. The DHR in his objections has categorically stated that the respondent No.2 to 4 and the father of the respondent No.1 have not disclosed about the existence of the respondent No.1. On perusal of the materials available on record, it is forthcoming that nowhere the respondent No.1 clearly established that the DHR had knowledge about her existence either at the time of execution of agreement of sale by the respondent No.3 and 4 and their father, or at the time of filing OS No.312/2008 for specific performance of contract. Therefore,

it cannot be said that the decree obtained by the DHR for specific performance of contract is fraudulent. Even if the respondent No.1 succeeds in getting her share in the execution schedule property in suit for partition, the execution schedule property will not become her exclusive property. The respondent No.2 to 4 will also get share in the execution schedule property. In such case, the decree for specific performance of contract obtained by the DHR will not become invalid in its entirety. In such case, it will become invalid in respect of share of the respondent No.1. Therefore, the findings given by the Trial Court and observation made by the Trial Court that the decree itself is invalid, is not in accordance with law. In the absence of declaration of entitlement of respondent No.1 in the execution schedule property by competent court, decree for

specific performance of contract obtained by the DHR in OS 312/2008 and execution proceedings initiated for execution of decree in execution No.20/2009, are valid and in accordance with law. Therefore, the order passed by the Trial Court allowing the application filed by the respondent No.1 under order 21 rule 96 to 98 and 101 of R/W/S CPC by holding the decree for specific performance of contract is not maintainable, is not in accordance with law. If the Trial Court really wanted to adjudicate the right of the respondent No.1 in the execution schedule property, it should have declared that for how much share the respondent No.1 is entitled in the execution schedule property. But the Trial Court simply allowed application without adjudicating the alleged right of the respondent No.1 in the execution schedule property.

15. As per the provisions of order 21 rule 96 CPC, where property sold in court sale is in the occupation of the tenant, on the application of the auction purchaser, court may order for delivery of possession. As per the provisions of order 21 rule 97 CPC., where the holder of the decree for possession of immovable property or auction purchaser is resisted or obstructed by any person in obtaining possession, he may file application to the court complaining such resistance or obstruction. In other words, it is the DHR or auction purchaser, who can file application under order 21 rule 97. As per the provisions of order 21 rule 98 of CPC., upon the determination of all questions referred in rule 101, the court shall in accordance with such determination make an order allowing application and directing the applicant be put in possession or dismissing the application or pass such other order as it may

deem fit. As per the provisions of order 21 rule 99 of CPC., where any person other than the judgment debtor is dispossessed of immovable property by the DHR or auction purchaser, he may make an application to the Court complaining of such dispossession. On such application, the court shall proceed to adjudicate upon the application in accordance with law. As per the provisions of order 21 rule 101 of CPC., all questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99, shall be determined by the Court dealing with the application and not by a separate suit. The respondent No.1 filed application before the executing court under order 21 rule 96 to 98 and 101 of CPC. In the said provisions, nowhere it is provided to the third parties to resist DHR from taking possession of immovable property.

Therefore, the application filed by the respondent No.1 itself is not maintainable.

16. If it is adjudicated by the competent court that the respondent No.1 has share and joint possession over the execution schedule property, she could file application under order 21 rule 99 of CPC after she being dispossessed by the DHR. Therefore, order passed by the Trial Court simply allowing application without determining right of the respondent No.1 in the petition by holding that the decree itself not maintainable, is not in accordance with law. Hence, the order passed by the trial court requires to be interfered by this court. Accordingly, ***the above point is answered in the Affirmative.*** As a result, it is just and proper to pass the following ;

ORDER

The appeal filed by the Appellant/Decree holder in Ex.No.20/2009 under Order 41 Rule 1 R/W/S 96 of CPC is hereby allowed.

The order passed by learned I Addl. Civil Judge and JMFC, Maddur in Ex.No.20/2009 dated 02.02.2026 on application filed by the respondent No.1 under Order 21 Rule 96 to 98 and R/W/S 151 of CPC is hereby set aside.

Application filed by the respondent No.1 under Order 21 Rule 96 to 98 and R/W/S 151 of CPC is hereby dismissed.

Interim applications pending if any stand disposed.

(Dictated partly to the Stenographer and transcribed by her, Judgment corrected and signed by me, then pronounced by me in the Open Court on this the 23rd day of June, 2026)

**(MOHANAKUMARI N.B.)
I-ADDITIONAL SENIOR CIVIL JUDGE
& JMFC, MADDUR.**