

**IN THE COURT OF PRL. CIVIL JUDGE AND JMFC,  
MALAVALLI**

**Present**

**Sri. Sachinkumar Shivapuji. BA,L LLB.,**  
*Prl.Civil Judge and JMFC.,*  
Malavalli

Dated this the 08<sup>th</sup> day of December, 2023

**Ex.No.14/2023**

**Decree holder:** Smt. Nagamma

**(By Sri.BSS., Advocate.)**

**V/s**

**Judgment Debtors:** Smt. Sundramma and others

**( By Sri.VNM., Advocate., )**

**I.A. No.I to V**

Applicant : Smt. Nagamma

V/s

Opponents : Smt. Sundramma and others

**Common Orders on I.A.No.I and II U/O.39 Rule 1  
and 2 R/w Sec. 151 of CPC, I.A. No.3 and 4 U/Sec.  
151 of C.P.C. and I.A.No.5 U/O 1 Rule 10(2) R/W  
Sec. 151 of C.P.C.**

The decree holder has filed on I.A.No.I and II  
U/O.39 Rule 1 and 2 R/W Sec. 151 Of CPC, I.A.

No.III and IV U/Sec. 151 Of C.P.C. and I.A. No.V U/O 1 Rule 10(2) R/W Sec. 151 Of C.P.C. prays to pass an ad-interim order of temporary injunction restraining the judgment debtors and proposed judgment debtor from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff and also restraining them from putting up any construction in Sy.No.135/2A of the suit property. Further, prays to order to demolish the compound constructed by judgment debtors in Sy.No. 135/2A by giving necessary order of police protection and Further, prays to bring the proposed judgment debtors for the proper adjudication.

**2.** For the perusal of I.A. No.I to V in support of affidavit which reveals that the decree holder has filed this petition against judgment debtor No.1

and 2 for the execution of decree in R.A.No.13/2021 dated 17.11.2022. Further, stated the decree holder has filed suit against judgment debtors for relief of specific performance of contract which came to decree directing them to execute the sale deed in favour of decree holder. Further, the decree holder already in possession and enjoyment of the suit properties. In the mean time, the judgment debtors have executed sale deed in respect of Sy.No.135/2A measuring 07 guntas out of 12 guntas of suit properties in favour of proposed judgment debtors on 18.10.2023 during pendency of this petition. Further, the judgment debtors and proposed judgment debtors are colluding with each other illegally created the sale deed and execution of sale deed is not binding on the decree holder. Further, the judgment debtors

were come near the suit properties unnecessary cause interference with the plaintiff possession and also trying to putup construction. In this regard decree holder filed complaint to Belakavadi police on 02.11.2023 but the police have given endorsement on the same day without taking action. Therefore, it is just and necessary to restrain the judgment debtors and from interfering with the decree holder and also putup any construction in the suit properties. Further, decree holder sought relief of demolish of the constructed compound in the 07 guntas of Sy.No.135/2A by the proposed judgment debtors by giving necessary police protection for the removal of compound and also materials and also implied the proposed judgment debtor for effect adjudication of the matter. Hence these all are

grounds decree holder prays to pass an ad-interim order of temporary injunction restraining the judgment debtors and proposed judgment debtor from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff and also restraining them from putting up any construction in sy.No.135/2A of the suit property. Further, prays to order to demolish the compound constructed by judgment debtors in Sy.No. 135/2A by giving necessary order of police protection and Further, prays to bring the proposed judgment debtors for the proper adjudication.

3. In spite of the services of the copy counsel for the judgment debtors has not filed to resist the application filed by the decree holder. Hence taken as not filed.

4. Heard the argument by counsel for the decree holder and considering the pleadings of the parties the points arise for consideration.

**POINTS**

*1. Whether the decree holder has made out Prima-Facie case in her favour?*

*2. Whether the balance of convenience lies in favour of decree holder?*

*3. I.A.No.III and IV U/Sec. 151 of CPC filed by the decree holder are deserved to allowed or not?*

*4. Whether the I.A.No.V U/o 1 Rule 10(2) R/W Sec. 151 of CPC filed by the decree holder is deserved to allowed or not?*

*5. What is order?*

5. My findings on the above points are as under;

*Point No. 1 : In the Negative,*

*Point No. 2 : In the Negative,*

*Point No. 3 : In the Negative,*

*Point No. 4 : In the Negative,*

*Point No. 5 : As per order as follow,*

**-: REASONS :-**

**6. Points No.1 to 4 :** Since these points are inter linked with each other, they are taken together for common discussion to avoid repetition of facts and evidence.

7. This petition filed by the decree holder against judgment debtors by executing the decree in R.A.No.13/2021. It is admitted fact the judgment debtors are directed to execute the registered sale deed in favour of decree holder within 03 months by receiving balance sale consideration amount of Rs.3,000/-. Further, the decree holder come with the present applications stating that, the decree

holder has filed suit against judgment debtors for relief of specific performance of contract which came to decree directing them to execute the sale deed in favour of decree holder. Further, the decree holder already in possession and enjoyment of the suit properties. In the mean time, the judgment debtors have executed sale deed in respect of Sy.No.135/2A measuring 07 guntas out of 12 guntas of suit properties in favour of proposed judgment debtors on 18.10.2023 during pendency of this petition. Further, the judgment debtors and proposed judgment debtors are colluding with each other illegally created the sale deed and execution of sale deed is not binding on the decree holder. Further, the judgment debtors were come near the suit properties unnecessary cause interference with the plaintiff possession and



also trying to put up construction. In this regard decree holder filed complaint to Belakavadi police on 02.11.2023 but the police have given endorsement on the same day without taking action. Therefore, it is just and necessary to restrain the judgment debtors and from interfering with the decree holder and also put up any construction in the suit properties. Further, decree holder sought relief of demolish of the constructed compound in the 07 guntas of Sy.No.135/2A by the proposed judgment debtors by giving necessary police protection for the removal of compound and also materials and also implied the proposed judgment debtor for effect adjudication of the matter. Hence these all are grounds decree holder prays to pass an ad-interim order of temporary injunction

restraining the judgment debtors and proposed judgment debtor from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff and also restraining them from put up any construction in sy.No.135/2A of the suit property. Further, prays to order to demolish the compound constructed by judgment debtors in Sy.No. 135/2A by giving necessary order of police protection and Further, prays to bring the proposed judgment debtors for the proper adjudication.

**8.** In the present case on hand the judgment debtors failed to comply the judgment and decree in R.A.No.13/2021. Moreover in spite of issuance of notice they appeared through their counsel but they have not filed objection or complied the

decree. Further, during the pendency of the petition the judgment debtors executed sale deed in respect of the Sy.No.135/2A measuring 07 guntas out of 12 guntas of suit property on 18.10.2023 in favour of Ramesh N. S/o Mahadeva. Now the decree holder stated that the proposed judgment debtors and judgment debtor colluding with each other or trying to interfere with the decree holder possession which she already taken possession of suit property as on the date of agreement of sale dated 11.02.2013. Further, stated that they trying putup compound wall in the 07 guntas of suit property which is cause irreparable loss to the decree holder. Therefore, it is necessary to restrain them and also remove the compound wall constructed by them by giving necessary police protection and also bring them on

record for proper adjudication. It is pertinent note here that this is execution petition in between decree holder and judgment debtors the third party is not necessary for the execution and they are not consider judgment debtors. Moreover the execution court can only act as per the terms of the judgment and decree. Of course during the pendency of the petition some portion of the property sold by the judgment debtors to the third party but the said sale deed is not binding on the decree holder and also which is not effected to executing the decree. Moreover, the decree holder have liberty to resist the illegal activity or interference of judgment debtors and third persons in the eye of law. Further, the decree holder having only right to execute the decree as per the judgment and decree by executing the sale deed

through court commissioner. Further, the executing court cannot go beyond the decree. Therefore, taking into consideration of the facts and circumstances of the case this court is of the opinion that the applications filed by the decree holder are not maintainable in the present case on hand. Further, it is directed to decree holder to execute the sale deed through court commissioner as per the terms of the decree in R.A.No.13/2021. Therefore, taking into the consideration the decree holder has not made out prime facie case and balance of convenience lies in her favour and also there is no grounds to allow the such applications filed by the decree holder. Hence Point No.1 to 4 answered in Negative.

**9. Point No.5:-** For the reason discussed supra, I proceed to follow;

**:- ORDER :-**

*I.A.No.I and II U/O.39 Rule 1 and 2 R/W Sec. 151 Of CPC, I.A. No.III and IV U/Sec. 151 Of C.P.C. and I.A.No.V U/O 1 Rule 10(2) R/W Sec. 151 Of C.P.C. Filed by the decree holder are hereby dismissed.*

*Further, it is directed the decree holder to execute the sale deed by taking necessary steps.*

(Dictated to the Stenographer, directly on computer, revised and corrected by me then pronounced in the open Court, this the **08<sup>th</sup> day of December, 2023**)

*Sri. Sachinkumar Shivapuji.  
Prl.Civil Judge and JMFC.,  
Malavalli.*