

KAMS300018452021



**IN THE COURT OF THE ADDITIONA SENIOR CIVIL JUDGE  
AND J.M.F.C AT HUNSUR**

**Present:** Smt.Anitha, B.A. (Law) L.L.B.,  
Addl. Senior Civil Judge & JMFC.,  
Hunsur.

**Dated this the 22<sup>nd</sup> day of June, 2024.**

**Ex.Case No.84/2021**

Decree Holder : H.C.Madappa Shetty,  
S/o Chikkaveerappa Sheety, 65 years,  
Retired Government Official,  
R/at L.I.G. House No.119, K.H.B.Colony,  
Hunsur Town.

-Vs-

Judgment Debtors: 1. Smt.Yashodha, W/o Late K.N.Kantharaju,  
Aged about 55 years,  
House Keeping and business,

2.Chandrashekhara, S/o Late K.N.Kantharaju,  
Aged about 35 years, Aged about 35 years,  
Business,

Both are R/at L.I.G.House No.64, Hudko 2<sup>nd</sup>  
stage, Kalkunike, Hunsur Town,  
Mysuru District.

1.	Provision under which the applications are filed	:	Under Order 12 Rule 8 of CPC
2.	Relief sought for	:	Notice to produce documents

3.	The date on which the application is filed	:	10.01.2024
4.	Number of the applications	:	IA No.III
5.	The date on which the objections are filed by different opponents	:	15.03.2024
6.	The date on which the orders passed on the said application	:	22.06.2024

### **ORDERS PASSED ON IA NO.III**

The learned counsel for the objector filed IA No.III under Order 12 Rule 8 of CPC. The objector filed the present application giving notice to the decree-holder as well as the judgment-debtor to produce the Lease cum sale deed issued by KHB, Mysore, the sale deed executed by KHB, Mysore, Form No.3 issued by CMC, Hunsur pertaining to execution schedule property. In the application it is stated that, the above said documents are required to be produced in this case. The judgment-debtor or the decree-holder are in custody, possession of said documents and prayed to direct the judgment-debtor and decree-holder to produce the said documents.

2. To the said application learned counsel for the decree-holder filed objection contending that, the application is not maintainable under law or on facts. The decree-holder has filed a suit against the judgment-debtor in OS No.67/2019 which was decreed and the said suit was for the relief of recovery of amount on the strength of a mortgage deed dated

27.05.2013. The said suit came to be decreed and already the decree-holder produced the documents in the original suit which are marked as per Ex.P1 and Ex.P8. Now the decree-holder is not in possession of the said documents. The sale deed alleged to have been executed by Karnataka Housing Board is not in possession of the decree-holder. It is also contended that, in collusion with the judgment-debtor this application is filed and prayed to reject the same.

3. Thereafter, heard arguments addressed by both the parties and perused the case papers. After hearing arguments and on perusal of the case papers the points that arise for consideration are as hereunder:

### **POINTS**

1. Whether the objector has made out sufficient grounds to direct the decree-holder or judgment-debtor to produce the documents mentioned in the application ?
2. What order?
4. The findings on the above points are as hereunder:

Point No.1: In the Negative

Point No.2: As per final order for  
the following:

### **REASONS**

5. **Point No.1:** This execution petition is arisen out of the decree passed by this court in OS No.67/2019 dated 20.02.2021. By way of filing this petition the decree-holder sought for recovery of Rs.12,81,020/- and also prayed to

attach the movable and immovable properties of the judgment-debtor. The schedule has been mentioned in the execution petition. Along with the petition the decree-holder produced the certified copy of decree in OS No.67/2019. As per the said decree the defendants/judgment-debtors were jointly and severally held liable to pay a sum of Rs.12,49,000- to the plaintiff/decreed-holder with interest at the rate of 6% per annum on the principal amount of Rs.6,00,000/-. It was further ordered and decreed that, if the defendants fails to pay the amount the plaintiffs are at liberty to recover the same through sale of the schedule property in the public auction. In the event of sale proceeds became insufficient to realize the amount from the defendants.

6. After filing of this case the cause notice has been served upon the judgment-debtors. They have remained absent and this court issued attachment warrant of movable of the judgment-debtors. At that time of judgment-debtors appeared and filed objection stating no means.

7. On 20.07.2022 the judgment-debtor filed IA under Section 151 of CPC to dismiss the execution petition on the ground that, till now no final decree has been drawn. On merits said application came to be dismissed by this court holding that, the suit was filed in respect of mortgaged property but it was for recovery of mortgaged money and not for redemption of mortgage. As such no preliminary decree was passed and it is not necessary for the petitioner to get final

decree. Thereafter, on 18.04.2023 one Chaya.K S/o Late K.N.Kantharajau filed IA No.I under Order 21 Rule 97 R/w Section 151 of CPC stating that, she has to be impleaded as objector in the case. The said application has been opposed by the decree-holder contending that, it is not maintainable. Furthermore, the objector filed IA No.II under Order 16 Rule 6 and 7 R/w section 151 of CPC to issue summons to the Commissioner CMC, Hunsur to direct production of relevant documents and give evidence about the documents of the decree-holder property. The said application was also opposed by the decree-holder and on 22.11.2023 the said application was rejected as not maintainable.

8. On 10.01.2024 again the objector came up with this application by giving notice to the decree-holder and the judgment-debtor to produce Lease cum sale deed issued by KHB Mysore, Sale deed executed by KHB, Mysore and Form No.3 issued by CMC, Hunsur. In the objection decree-holder stated that, already he has produced two documents in the original suit which are marked as per Ex.P1 and Ex.P8. In the notice the objector has not specified about the date of Lease cum sale deed and the sale deed. The said notice does not give any particulars about the documents to be produced. Further, it is very much necessary to note that, in the affidavit filed in support of IA under Order 21 Rule 97 of CPC the address of the objector is one of the same. The decree-holder in the objection statements to the notice under Order 12 Rule 8 of

CPC stated that, he is not in possession of any such sale deed executed by the KHB, Mysore. Furthermore, the sale deed alleged to have been produced by the objector are public documents and the objector can very well obtain certified copy of the same. Therefore, this court comes to the conclusion that no grounds have been made out by the objector. Hence, Point No.1 is answered in the negative.

9. **Point No.2:** In view of the reasons discussed above this court proceeds to pass the following:

**ORDER**

IA No.III filed by the objector under Order 12 Rule 8 of CPC is hereby rejected with cost of Rs.500/-.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 21<sup>st</sup> day of June, 2024.)

**(Anitha)**

Addl. Senior Civil Judge and JMFC.,  
Hunsur.