

ORDER ON I.A. NO.1 FILED U/O 21 R-32(5) OF C.P.C.

This present application has been preferred by the applicant/DHR seeking to appoint the court agent to execute the sale deed towards the DHR in respect of the schedule property.

2. Further, the applicant/DHR filed affidavit and submitted that, the petition for execution has been preferred as per the judgment passed by this court in O.S. No. 163/2007. The JDR was directed to execute the sale deed in respect of the decretal schedule property in favour of the DHR/applicant within 6 months. However, the JDR do not come forward to execute the sale deed in compliance of the decree passed by this court. Hence, the applicant has preferred this petition for the purpose of enforcement of the decree and the present application has been came to be registered seeking for appointment of the Commissioner to do the same and to execute the sale deed towards the DHR as per the decree passed in O.S. No. 163/2007.

3. Thereafter, the said application was resisted and also affronted by the 2nd JDR who has also presented the statement of objections as against and declining the averments mentioned in the application and affidavit. Wherein in the said statement

of objections it has been excreted and contended by the JDR that, one Dharshan who is the son of the JDR Thayamma had already filed a suit in O.S. No. 98/2023 for the relief of injunction and he has also obtained temporary injunction order pertaining to the same survey number 391/12. When the said injunction has been issued towards the son of the JDR Dharshan. The application which is filed for execution of the sale deed is not maintainable. Hence, prays for dismissal of the application.

4. Heard the respective counsels representing and arguing on behalf of the parties.

5. The following points arise for this court's consideration.

1) Whether applicant has made out sufficient grounds for allowing the present application?

2) What Order?

6. This court findings on the above points for consideration are as under:

Point No.1: In the Negative

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

REASONS

7. **POINT NO.1:**

Upon considering the application and the statements contemplated therein and the objections of the JDR herein, the suit of the plaintiff in O.S. No. 163/2007 which was registered

by the DHR herein as against the JDR has already been decreed on 24.10.2011. Wherein as per the said judgment and decree passed by this court, the defendant No.1 who is the JDR No.1 herein was directed to execute the sale deed towards the decree holder herein within 6 months and collecting the remaining sale consideration of Rs.10,000/-. Further it was also reserved liberty to the DHR that, upon failure on the part of the JDR to execute the sale deed, the DHR was at right and liberty to process for execution of the sale deed. Thereafter, by virtue of the said judgment the decree is also followed as per the judgment passed by this court. Thereafter, the petition for execution has been presented. Wherein it is alleged that, the JDR in spite of the order passed by this court after the expiry of the time prescribed and stipulated in the order passed by this court, the JDR violated, infringed and did not obey the order passed by this court. Therefore, it has been necessitated the requirement for processing further to execute the deed of sale as per the decree passed towards him.

8. Further, on verifying the materials which are in placed before this court by the parties, one Dharshan represented through his natural guardian mother has preferred this suit in O.S. No. 98/2023 for the relief of declaration, partition as a main relief and other ancillary and incidental consequential reliefs. Further, the said Dharshan who was represented through his mother has also obtained an order of ex-parte temporary injunction order on 03.03.2023, wherein the

defendants including the DHR/applicant Umesh was asked to restrain from alienating the schedule property and the present decree schedule property in the execution petition No. 16/2023 i.e., Sy.No. 391/12 to an extent of 1 acre 20 guntas of land is also part and parcel of the suit which is pending adjudication before the Hon'ble Additional Civil Judge & J.M.F.C., K.R.Nagar.

9. Further, the said suit which was registered is pending for adjudication and no final order has been passed. At this stage, the present application for execution of the sale deed pertaining to the property which was already restrained and subject matter of the suit in O.S. No. 98/2023 has been initiated and came to be filed by the decree holder. At this movement it is just and necessary to apt and necessary to discuss whether it is justifiable to consider the application or the application which is maintained as to be considered sparingly with a view to obtain clarification so as to enable and clarify this court to process further in this matter and to decide the petition which is pending for adjudication. Further it is in the considered view and thoughtful appreciation of the factual matrices and cumulative and integral vetting through the litigation and also the pleadings and counter pleadings and allegations and counter allegations made by the parties to the petition, so for as the order of injunction which is in existence are having effect pertaining to the property in which the petition for the purpose of enforcement of the decree passed, admittedly an order of injunction what has been passed by the Hon'ble Additional Civil

Judge & J.M.F.C., K.R.Nagar, is behind the scope discussion and ambit of this court and the same does not comes under the purview and limits of this court.

10. Further, the said order is correct or not will be decided by the court of Hon'ble Additional Civil Judge & J.M.F.C. K.R.Nagar, if the aggrieved party can certainly prefer or challenge the appeal against the said order passed. However, the subject matter of the property in the suit in O.S. No. 98/2023 which is also the same property which has described and annexed along with the petition schedule property and the same property was directed to be maintained without there being any alienation, the said order so far as prevailing and will be in existence and force, this court unless and until such an order has been finalized and findings were given in respect of the property in dispute, it is not justified and correct to process further in the petition so as to appoint the Commissioner of the court in order to effectuate and to execute the deed of sale in favour of the applicant/DHR as per the decree which has been passed by this court in the suit in O.S. No. 163/2007.

11. Hence, in the thoughtful and thorough considered view and opinion of this court, let the parties to the petition i.e., the applicant herein who appeared before the court of Hon'ble Additional Civil Judge & J.M.F.C., K.R.Nagar and the opponent/JDR can decide the suit which is part and parcel of the schedule in O.S. No. 98/2023. Thereafter, the petition

which is filed for execution will be taken to further process and procedure aspects will be followed thereafter. But, till then, so long as the order of injunction is in existence, prevail or subsistence, it is not correct or proper to execute the sale deed violating and in contravention of the very order which has been passed by the Hon'ble Additional Civil Judge & J.M.F.C. K.R.Nagar, in O.S. No. 98/2023. Hence, this court without further discussion proceeds to answer point No.1 in the **Negative.**

12. POINT NO.2:

In view of the above discussion and reasons mentioned therein this court proceeds to pass the following:

ORDER

The application filed by applicant/DHR U/o 21 R-32(5) of C.P.C. is hereby dismissed for time being.

However, it is further clarified that, once the suit in O.S. No. 98/2023 which is pending before the Hon'ble Additional Civil Judge & J.M.F.C. K.R.Nagar, is adjudicated and decided, the present petition will be reconsidered.

**(Chandan S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.**