

KAMS410009392021



**IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR**

PRESENT

**Sri. Chandan S, B.Com., LL.B
Prl. Civil Judge & JMFC, Krishnarajanagara.**

DATED 02ND DAY OF JULY 2025

Ex./36/2021

Decree holder : Syed Munawar Pasha

-V/s-

Judgment Debtors : Syed Latheef

I.A. No.3

**Applicant : Syed anwar S/o Late. Syed Musthaf
Aged about 59 years,
R/at Hosur Village,
Chunchanakatte Hobli,
K.R.Nagar Taluk.**

-V/s-

Opponents : Syed Munawar Pasha --- DHR

**ORDERS ON IA NO.3 FILED U/O 21 R-97, 101 R/W SEC.
151 OF C.P.C.**

The objector the applicant has brought introduced and presented this application. Wherein the applicant/objector has seeking permission of this court to represent the petition and to adjudicate the right of the applicant.

2. Further, the applicant Syed Anwar in an affidavit which was submitted along with application, it has been adverted, held and stated by the applicant that, the suit had been registered by the holder of the decree for the relief claimed and impetration, declaration and possession. The said suit was decreed on 28.11.2011. The JDR before filing the suit, he has executed Hibanama dated 10.06.1998, the applicant/obstructer has become the owner of the schedule property and obtained the possession of the schedule property from the JDR. Further it has been postulated, indicated and described before this court that, the applicant is settled and he has been in possession and enjoyment over the application schedule property. However, during the 1st weak of July 2023, the holder of the decree by virtue of the decree passed in O.S. No.191/1999, he has initiated quarrel with the obstructer and when the applicant got obtained the documents and the property claimed by the obstructer and the property claimed by the decree holder are totally different to each others. Therefore, the identification of the disputed property claimed by the decree holder and the property claimed by the applicant has to be verified and examined by the Commissioner of the Court. Therefore, the applicant prays and it was requested to dismiss the petition and to initiate the inquiry process.

3. Further repelling, challenging, controverting and disputing the said application, the objection is filed. Further

in the said objections, the DHR has stated and it was submitted before this court that, he had filed the suit in O.S. No. 191/1999 and it has come to be decreed on 28.11.2011. Dissenting and aggrieved with the said judgment and decree passed by this court, the JDR has preferred an appeal RA No. 03/2012. Wherein the impugned judgment passed by this court has been retained, confirmed and affirmed by the appealed court dismissing the appeal on 10.12.2012. Again the JDR preferred the RSA No. 161/2013 before the Hon'ble High Court of Karnataka challenging the validity and fidelity, correctness of the judgment and decree. However, the said 2nd appeal which was instituted before the Hon'ble High Court of Karnataka which is also been dismissed on 31.01.2020. Therefore, the present execution petition being planted, brought and instituted before this court for the purpose of enforcement and performance of the decree passed by this court. Therefore according to the DHR, the said Hibinama dated 10.06.1998 has been invented, created and discovered in order to eschew, obliterate, efface and forgo the decree passed by this court. Hence, the application is not maintainable and liable for dismissal.

4. Thereafter, the counsel representing the litigants appeared and addressed their arguments regarding their pleadings of the application and also the objections therein. After careful perusal of the pleadings and also the materials

which are available before this court, notably, the instant petition has been filed seeking for execution of the decree passed in O.S. No. 191/1999, wherein the DHR sought for the possession of the petition schedule property.

5. On appreciating relevant portion and also considering the factors and dispute between the parties, the suit in O.S. No.191/1999 registered and reinstated by the plaintiff who is the DHR herein, claiming for the relief of declaration and possession has been decreed, wherein the DHR acclaimed and he was declared as the owner of the schedule property. Further, the JDR/defendant was directed to hand over the physical possession of the schedule property in favour of the decree holder within the period of 6 months. Thereafter, being dissatisfied, disagreed and dissenting the judgment passed by this court, Regular appeal No.3/2012 being launched and laid before the Hon'ble Senior Civil Judge Court, K.R.Nagar. Further, the said appeal registered and instituted before the said appellate court being dismissed as per the judgment passed therein on 10.12.2012. Further, while dismissing the said appeal, the judgment and the decree passed by this court has been confirmed. Thereafter, challenging and impugning the said appeal judgment and decree, an appeal has been filed and moved before the Hon'ble High Court Karnataka, which was numbered as RSA No.661/2013. Obstant to the said appeal being laid and instituted before the Hon'ble High Court

of Karnataka, the said appeal at the end on 31.01.2020 it was dismissed.

6. Thereafter now during this instant junctures, traversed presently, the incumbent and the application has been invoked by the objector herein, wherein he has taken specifically plea and contention that, he has become the owner of the schedule property, due to the reason and on account of Hibinama executed in favour of the applicant on 10.06.1998. Further, the other grounds, the contemplations and the reasons assigned by the applicant is the property claimed by the obstracter and the holder of the decree are totally strange and they are not similar or identical.

7. Therefore according to the applicant, the commissioner of the court has to examine, verify and to measure the property in a trial and enquiry, therefore he is seeking to array himself as the objector for the purpose of adjudication of his rights. However, upon perusal keenly, bestowing attention and leerily throwing our anxious and thoughtful attention, notice, considerations and disquisition of the documents so far adduced, plentiful and sufficiently laid and presented before this court. The Hon'ble High Court of Karnataka in its judgment dated 31.01.2020, it has categorically, manifesto and significantly held and clarified that, there is no contra evidence recorded to show that, both these properties are similar or the suit schedule property does not exists. Since

the question as to whether the existence of the suit property and as to whether the plaintiff was the owner of the suit property are essentially questions of facts, which are already concurrently held in favour of the plaintiff, no substantial question of law arises for the purpose of consideration in the said appeal.

8. Therefore, on account of and inadvertence to the judgment of the Hon'ble High Court of Karnataka as well as the judgment passed by the Hon'ble Senior Civil Judge Court, K.R.Nagar, in RA No. 03/2012, the application which is filed by the objector do not sustain or having any prevalence and holds good. Therefore, the said application is clearly sans merit and it is liable to be dismissed. Therefore this court proceed to pass the following:-

ORDER

Application No.3 filed U/o 21 R-97,
101 R/w Sec. 151 of C.P.C. is hereby
dismissed.

For steps, call on: 16.07.2025.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in the Open Court on this the 02nd day of July 2025]

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