

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 FEBRUARY 2026

Ex/36/2021

Plaintiff : Syed Munawar Pasha

-V/s-

Defendant : Syed Latheef

I.A.6

**Applicant : Syed Anwar S/o Late. Syed Musthaf
Aged about 59 years,
R/at Hosur Village, Chunchanakatte Hobli,
Saligrama Taluk, Mysore District.**

--- Objector

-V/s-

Opponent : Syed Munawar Pasha

--- Decree Holder

Provision under which the applications are filed	U/o 26 R-9 of C.P.C.
Relief sought for	To appoint the surveyor
The date on which the applications are filed	18.12.2025
Number of the application	6

Date on which the objections are filed by the different opponents	21.07.2025
Date on which the order is passed	02.02.2026

ORDERS ON I.A. NO.6 U/O 26 R-9 OF C.P.C.

The present application is filed by objector seeking intervention of this court by appointing a Court Commissioner for the purpose of measurement, demarcation and identification of the suit schedule property, so as to give proper effect to the decree and the orders passed by the Hon'ble High Court of Karnataka in Writ Petition No.25323/2025.

2. It is submitted that, the suit in the present execution proceedings is one filed for enforcement of the decree passed in O.S. No.19/1999. After filing the execution petition, it came to the notice of the applicant that, in violation of the Ibanama and the decree, the decree-holder, in collusion with the judgment-debtor who was the earlier defendant in the suit, has attempted to take possession of property beyond the scope of the decree.

3. Upon noticing the pendency of the execution proceedings, the applicant had filed an objection application under Order 21 Rule 97 of C.P.C., numbered as Application No.3. After contest, the said application came to be dismissed by this Court. Being aggrieved by and dissatisfied with the said order, the applicant preferred a writ petition before the Hon'ble High Court of

Karnataka, challenging the legality, validity and correctness of the order passed by this Court in Writ Petition No.25323/2025.

4. It is the specific contention of the applicant that, the decree-holder is not entitled to seek delivery or enjoyment of any property beyond what is expressly granted under the decree. In the absence of proper measurement and demarcation, there is every likelihood of excess property being taken under the guise of execution.

5. Therefore, in order to ascertain the exact extent, boundaries, and identity of the suit schedule property, and to determine whether any excess area is sought to be delivered in favour of the decree-holder, it has become absolutely necessary to appoint a Court Commissioner/qualified surveyor to measure the suit schedule property, demarcate the boundaries in accordance with the decree, Ibanama, and revenue records and submit a detailed report and sketch to this court. Hence, the applicant has approached this court seeking permission and appropriate orders for appointment of a commissioner, in the interest of justice and to avoid irreparable hardship and multiplicity of proceedings. Therefore it is humbly prayed that, this Court be pleased to allow this application and appoint a Court Commissioner for measurement and demarcation of the suit schedule property, in the interest of justice and equity.

6. According to the decree-holder, the objection application filed by the objector itself has already been dismissed by this Court, and therefore, the present application is barred and untenable. It is further contended that, the Hon'ble High Court of Karnataka has not passed any specific direction mandating appointment of a Commissioner in the present execution proceedings.

7. It is admitted and well settled that, if a decree-holder attempts to take possession of any property beyond the scope of the decree, such excess property cannot be executed. However, in the present case, the decree-holder submits that the execution is strictly confined to the property described in the decree and no area beyond the decree is sought to be delivered. The decree-holder further submits that, the decree passed in O.S. No.19/1999 has been confirmed in R.A. No.3/2012 by the Hon'ble Appellate Court, and the said decree has also been affirmed by the Hon'ble High Court of Karnataka. There is no stay order, suspension, or restraint operating against the execution of the decree.

8. It is further contended that, the decree-holder cannot and is not executing the decree beyond what is stated in the execution petition or beyond the property covered under the decree. All documents, pleadings, and records relied upon by the

decree-holder clearly demonstrate that the execution is within the parameters, boundaries, and extent of the decreed property.

9. Therefore the decree-holder submits that, the present application is filed without any direction of the Hon'ble High Court of Karnataka, only with an intention to delay and protract the execution proceedings, despite there being no stay or impediment to the enforcement of the decree. Hence, the decree-holder prays that, this court be pleased to dismiss the present application with costs, as the decree has already attained finality and is fully executable without any barrier and obstacle.

10. Heard the rival litigants under the application and also verified the documents produced before this court.

11. 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?

12. 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

13. POINT NO.1:

This application is filed by the objector in Execution Case No.36/2021 seeking appointment of a Court Commissioner for measurement, demarcation and identification of the suit schedule property, contending that the decree-holder is attempting to take possession of property beyond the scope of the decree passed in O.S. No.19/1999.

14. The applicant submits that, despite the decree, the decree-holder, in collusion with the judgment-debtor, is attempting to take possession of excess property and that, in the absence of measurement and demarcation, there is a likelihood of delivery of property beyond the decree. Hence, appointment of a Court Commissioner is sought.

15. Although the decree-holder has filed objections contending that, the objection application filed by the objector under Order 21 Rule 97 CPC has already been dismissed by this Court and that the present application is not maintainable. It is further contended that, the Hon'ble High Court of Karnataka, while disposing of Writ Petition No.25323/2025, has not issued any direction for appointment of a Commissioner. The decree-holder submits that, the decree passed in O.S. No.19/1999 has attained finality, having been confirmed in R.A. No.3/2012 and affirmed by the Hon'ble High Court of Karnataka, and that there

is no stay or restraint operating against the execution of the decree.

16. It is not in dispute that, a decree-holder is entitled to execute the decree strictly in accordance with its terms and that no property beyond the decree can be delivered in execution. However in the present case, the applicant has not placed any cogent material before this Court to prima-facie establish that the decree-holder is seeking delivery of property beyond the suit schedule property described in the decree.

17. The records disclose that, the execution petition is filed strictly in respect of the property covered under the decree. The earlier objection application filed by the applicant under Order 21 Rule 97 CPC has already been dismissed after due consideration. The present application, in substance, seeks to reopen the very same issues under the guise of seeking appointment of a Commissioner.

18. Further, the Hon'ble High Court of Karnataka, while disposing of Writ Petition No.25323/2025 has not issued any specific direction mandating appointment of a Court Commissioner in the present execution proceedings. In the absence of such direction and in the absence of any ambiguity in the decree or execution schedule, appointment of a Commissioner at this stage is neither necessary nor warranted.

This Court is of the considered view that, the present application is filed only with an intention to delay and protract the execution proceedings, despite the decree having attained finality and there being no legal impediment to its execution. Hence, the application is liable to be **dismissed**.

19. 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/plaintiff
U/o 26 R-9 of C.P.C. for appointment of a Court
Commissioner is hereby dismissed as being
devoid of merits.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me
in the Open Court on this the 02nd day of February 2026]

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