

KAMS410012262022



**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 MARCH 2026

EX/25/2022

Decree Holder: **Sri. H.V.Sudarshan**

-V/s-

Judgement Debtor: **Smt.Lakshamma and others**

I.A.2

Applicant : **Sri. H.V.Sudarshan**

--- DHR

-V/s-

Opponents : **Smt.Lakshamma and others**

--- JDR

Provision under which the application is filed	U/o 21 R-54 R/w 151 of C.P.C.
Relief sought for	Attachment of Property
The date on which the application is filed	03.03.2025
Application Number	2
Date on which the objection is filed by the different opponent	04.06.2025
Date on which the order is passed	02.03.2026

ORDER ON I.A.2 FILED U/O 21 R-54 R/W 151 OF C.P.C.

The present application is filed U/o 21 Rule 54 R/w Sec.151 of C.P.C. and the same has been posted for consideration before this Court. The applicant herein is the Decree Holder (DHR), who seeks attachment of the schedule property for realization of the decree amount.

2. The applicant/DHR has filed an affidavit in support of the application, wherein it is stated that he had instituted the original suit in O.S. No.279/2010 against the JDR, who are the legal heirs of late.Makegowda, for recovery of money on the basis of an on-demand promissory note executed by late.Makegowda the father of the defendants/JDR. This Court after due consideration, decreed the said suit, holding the defendants liable to pay the decree amount. The decree amount consists of a sum of Rs.85,000/-, together with interest at the rate of 6% per annum on Rs.50,000/- from the date of suit till the date of realization. Despite the passing of the decree, the Judgment Debtors have failed to pay any portion of the decree amount till date. It is further contended that the JDR's are willfully evading payment by giving one reason or the other, thereby obstructing and delaying the execution proceedings.

3. It is further averred that, as per the decree and the material placed on record, the original owner of the schedule property was late.Makegowda S/o Ramegowda, who owned land measuring 4 acres 27 guntas in Survey No.54, situated at Chikka Nayakanahalli

Village, Saligrama Hobli, now Saligrama Taluk, Mysuru District. After the death of the said Makegowda, his legal heirs, namely the present Judgment Debtors, succeeded to his estate as his sole surviving legal representatives.

4. Subsequently, the khatha of the said property has been transferred in the name of the legal heirs/JDR, and they are presently in possession and enjoyment of the same. Hence, the applicant submits that the schedule property, which has devolved upon the Judgment Debtors by inheritance, is liable for attachment and sale towards satisfaction of the decree.

5. In order to effectively execute and implement the decree passed by this Court, the applicant prays that the schedule property belonging to JDR No.3, which he succeeded from his deceased father late.Makegowda, be attached and proceeded against for sale in accordance with law. Along with the application, the applicant has produced certified copies of the RTC extracts for the years 2019–2020 and 2020–2021 standing in the name of deceased Makegowda, certified copy of the RTC for the year 2025 standing in the name of JD No.3 and Record of Rights (Form No.13) pertaining to the schedule property.

6. On the other hand, repudiating, denying, disputing, contradicting, challenging, and opposing the application filed by the Decree Holder U/o 21 Rule 54 R/w Sec.151 of CPC, the Judgment

Debtor No.3 has filed the present statement of objections. At the outset, it is contended that, the application filed by the Decree Holder is not maintainable either in law or on facts and is liable to be dismissed in limine.

7. It is submitted that, the decree in O.S. No.279/2010 was passed ex-parte against all the Judgment Debtors, who are jointly and severally liable to pay the decree amount. The decree amount consists of Rs.85,900/- with interest at the rate of 6% per annum on Rs.50,000/-. Therefore, the liability to satisfy the decree is joint, and the Decree Holder cannot selectively proceed only against the property of Judgment Debtor No.3, ignoring the properties standing in the names of other Judgment Debtors.

8. It is further contended that, Judgment Debtor No.3 alone is not financially capable of satisfying the entire decree amount, and fastening the entire liability on him is arbitrary, discriminatory, and contrary to the terms of the decree. The Judgment Debtor No.3 further submits that, there are several other properties standing in the names of other Judgment Debtors, Land bearing Survey No.172/2A, measuring 20 Guntas, standing in the name of Lakshmamma, Land bearing Survey No.168/6, measuring 3 guntas, standing in the name of Ramesh, land bearing Survey No.168/4, measuring 1 acre 7 guntas, standing in the name of Ramesh, land bearing Survey No.168/2, measuring 10 guntas, standing in the

name of Ramesh, one RCC house situated at Lakshmipuram Village, standing in the name of Asha W/o Ramesh.

9. Despite the availability of the above properties belonging to other Judgment Debtors, the present execution petition has been filed only seeking attachment of the property belonging to JDR No.3, which clearly shows mala fide intention and selective execution. The application has been filed with an intention to harass, dispossess, and unlawfully deprive Judgment Debtor No.3 of his property and is therefore unsustainable.

10. It is further submitted that, except the property standing in the name of Judgment Debtor No.3, there are no other independent properties available with him. Moreover, land bearing Survey No.168/4 measuring 1 acre 7 guntas has already been alienated and allotted in favour of Ramesh for the purpose of discharging a loan raised by the deceased father late.Makegowda. Hence, the said Ramesh alone is bound to discharge the said loan liability, and the other Judgment Debtors cannot be fastened with the same.

11. Further it is specifically contended that, the schedule property sought to be attached has already been mortgaged, and a loan of Rs.6,90,000/- has been raised from a financial institution/agricultural credit society. The property is already burdened with subsisting encumbrances, and therefore no free, salable interest is available for attachment. For all the aforesaid

reasons, the application filed by the Decree Holder is devoid of merits, untenable in law and on facts and is liable to be dismissed with costs.

12. I have heard the learned counsel for the DHR and the learned counsel for the JDR and perused the records.

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

1) Whether the Decree Holder is entitled to attachment of the schedule property under Order 21 Rule 54 CPC, despite the objections raised by Judgment Debtor No.3?

2) What Order?

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

Point No.1: In the Affirmative

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

REASONS

15. POINT NO.1:

It is an admitted fact that, the decree in O.S. No.279/2010 was passed against all the Judgment Debtors, who are jointly and severally liable to satisfy the decree. The decree has not been stayed, set aside, or modified. When liability is joint and several, the Decree Holder has the legal right to proceed against any one or more of the Judgment Debtors, or against any of their properties, for realization of the decree amount. The Judgment Debtors cannot

dictate the mode of execution or compel the Decree Holder to proceed first against other properties.

16. The contention that the Decree Holder must first proceed against the properties of other Judgment Debtors is untenable in law. Order 21 CPC does not impose any such restriction. It is well settled that, A Decree Holder is the dominus litis in execution proceedings and is entitled to choose the Judgment Debtor and the property against which execution is sought, so long as the property is legally attachable. Therefore, the objection of selective execution is rejected.

17. The material on record clearly establishes that, the schedule property originally belonged to late Makegowda and, after his death, has devolved upon his legal heirs, including Judgment Debtor No.3. The RTC for the year 2025 stands in the name of JD No.3. Under Section 50 CPC, the property of a deceased Judgment Debtor, in the hands of his legal representatives, is liable for execution of the decree passed against the deceased, to the extent of the estate inherited. Hence, the schedule property is clearly liable for attachment.

18. The contention that, the property is mortgaged and that a loan of Rs.6,90,000/- is outstanding does not bar attachment. Attachment under Order 21 Rule 54 CPC does not require the property to be free from encumbrances. Attachment only creates a charge subject to prior encumbrances, if any. The existence of a

mortgage does not render the property immune from attachment; it is a matter to be considered at the stage of sale and distribution of sale proceeds. Hence, this objection also fails.

19. The allegation that, the application is filed with mala-fide intention or to harass JDR No.3 is unsupported by any material. On the contrary, the records reveal that the decree is of the year 2010 and execution has been initiated only after prolonged non-payment. The conduct of the Judgment Debtors clearly shows willful evasion of the decree. For the foregoing reasons, this Court holds that, the decree is valid and executable, the Decree Holder is entitled to proceed against the schedule property, the objections raised by Judgment Debtor No.3 are devoid of merits and are liable to be rejected. Hence this court inclined to answer the **point No.1 in the affirmative.**

20. POINT NO.2:

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

ORDER

The application filed by the DHR U/o 21 R-54 R/w Sec.151 of CPC is hereby allowed.

The schedule property belonging to Judgment Debtor No.3, as described in the execution petition, is ordered to be attached in accordance with law for realization of the decree amount.

No order as to costs.

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

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