

ORDER ON MAINTAINABILITY

This petition for enforcement and execution of the decree has been came to be presented, filed and moved before this court seeking and panting for delivery of execution of schedule property against the JDR through the court as per the preliminary and final decree passed in FDP 24/2021.

2. Thereafter, when the notice against the respondent is being issued, upon service and the notice being served and executed on the JDR, the said JDR is represented through an advocate he made his appearance before this court and he has filed his statement of objections, taking on against and challenging the petition preferred before this court.

3 Where according to the JDR, the decree holder obtained the decree for partition and separate possession. However, the JDR's/opponent are in settled occupation and enjoyment over the schedule property. Therefore, being aggrieved by the said judgment and decree passed by this court, this JDR preferred

an appeal before the Hon'ble Senior Civil Judge, K.R.Nagar, in RA No. 12/2017. Thereafter, as against the order that has been passed by the Hon'ble Senior Civil Judge, K.R.Nagar, impugning, assailing and challenging the said judgment, the JDR has preferred an appeal before the Hon'ble High Court of Karnataka and the said Regular Second Appeal is pending before the Hon'ble High Court and the JDR has moved an application before the Hon'ble High Court for obtaining stay order.

4. Therefore, the petition which is filed for execution is not maintainable, tenable and executable one. Therefore, as per the oppositions and counter in the form of objections, the petition which is presented by the petitioner is not maintainable and sustainable one. Hence, prays for rejection of the petition.

5. Thereafter, this court heard the argument that has been addressed, rendered and canvassed before this court on behalf of the decree holder and the opponent/JDR. Further, this court has also meticulously, thoroughly and integrally went through the papers, documents and materials that are placed before this court by the parties to the lis. The suit in O.S No.307/2015 which was filed and preferred by the plaintiffs the DHR herein has been decreed. Wherein the plaintiff was allotted one share among 10 share in the schedule property.

Preliminary decree has also been passed in accordance with the judgment as rendered by this court. The JDR namely one Kumar has preferred an appeal before the Hon'ble Senior Civil Judge, K.R.Nagar, against the judgment and decree passed by this court in O.S. No.307/2015. The Hon'ble Senior Civil Judge, in its order dated 08.10.2021 while allowing the appeal filed by the appellant U/o 41 R/w 96 of C.P.C, allowed the said appeal and modified the judgment and decree passed by this court. Thereafter, the decree has also been recorded and drawn as per the judgment passed by the Hon'ble Senior Civil Judge, K.R.Nagar.

6. Further adding to this FDP 02/2021 has been preferred, wherein final decree has also been drawn by this court. Now the present petition is filed for the purpose of enforcement, execution of the judgment and decree passed therein. Admittedly, as per the very statement of objections and defence that has been postulated, contended and divulged by the JDR, no stay has been granted against the judgment and decree passed. Unless and until, the judgment and decree passed by this court is set aside or challenged, varied and altered, there is no impediment, bar, prohibition and restrictions on the part of this court to further processing the petition which has been pending before this court. Further, merely and barely preferring an appeal except and without any order of stay to stop and to hiatus the proceedings of the

petition, it certainly can no way prohibit, abstain and restrict the executing court from proceeding further in the petition. Hence, this court is of the clear, thoughtful view and opinion that, if the JDR fails to initiate proper steps and process to obtain the stay order to pause and hiatus the proceedings of the petition.

7. In the absence of any order of stay, the executing court can process further and continue the proceedings of the petition and suitable and appropriate orders will be passed as per the norms guidelines set up under the decree passed therein. Therefore, this court is of the decision and firmly held that, the petition cannot be dismissed or rejected as it is not maintainable as per the statement of objections. Therefore, the objections which are presented by the JDR cannot sustain, prevail and they are sans merit and this court clearly held that, the petition is very much maintainable.

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