

KAMS500002192014



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : **Sri. Kamalaksha D., B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 3rd day of July 2024

O.S./26/2014

Plaintiffs: J.Shashirekha and others
-V/s-

Defendants: J.Suresh and others

I.A. XLIV

Applicant : Shobha
.... 6th defendant

-V/s-

Opponents: Suresh and others
defendants

ORDER ON I.A.XLIV

The defendant No.6 filed application under Section
151 of C.P.C. to stay the issue of delivery warrant of

immovable properties ordered in FDP 24/2014 and Ex.17/2024 till disposal of this suit.

2. The applicant sworn in her affidavit that she was 6th defendant in the suit, thereafter due to unavoidable circumstances she was transposed as plaintiff. It is further explained that, recently it has come to the knowledge of the applicant that in O.S.No.81/2006 the plaintiffs of that suit obtained order of share as per the judgment and decree passed of that suit, subsequently Execution Petition came to be filed to deliver the possession of partition or shared property. It is further explained that, since the sister of the plaintiff Shashirekha opposed to the delivery proceedings, the Ameen could not do his commissioner work and reported the court to issue order for police protection to deliver the possession of property. It is further explained that, the present plaintiffs/decreed holders of O.S.81/2006 have no right over the suit schedule properties. They have taken further contention that they do not belong to the family of the applicant and they are strangers. The trial in

in this suit i.e., O.S.26/2014 is almost completed. Suppose delivery warrant is not stayed it would adversely reflect to the relief of this suit. Therefore, the applicant/transposed plaintiff prays to stay the delivery warrant of Ex.No.17/2024.

3. Per contra, it is objected by the defendants No.4 and 5 stating that, the plaintiffs 1, 2 and 6th defendant at the time of instituting the suit have filed two applications which were came to be dismissed by this court and also by the Hon'ble V Additional District and Sessions Judge, Mysuru. The said order is final and conclusive order between the parties. Under such circumstances, the plaintiffs and 6th defendant by suppressing the fact trying to confuse the court to get favourable order in their favour. It is further submitted that, the judgment and decree passed by this court in O.S.No.81/2006 on 01.01.2009 has reached finality and Hon'ble II Addl. District and Sessions Judge, Mysuru in R.A.No.22/2009 on 06.06.2011 and the Hon'ble High Court of Karnataka in M.S.A.No.157/2011

dated 01.08.2012 and again in R.A.No.22/2009 on 07.11.2013 and in R.S.A.No.231/2014 dated 01.07.2015 before the Hon'ble High Court of Karnataka in R.A.No.883/2016 dated 30.03.2013 has upheld the judgment and decree passed by this court on 01.01.2009.

It is further explained that, on 02.12.2019 this court passed the final decree order in F.D.P.No.24/2014 and the defendants 1 to 3 have preferred R.A.No.111/2020 and 112/2020 before the Hon'ble III Addl. District and Sessions Judge, Mysuru. The said order was confirmed again appeal was preferred. Therefore, the opponents/defendants No.4 and 5 further explained that the order passed by this court in earlier suit i.e., O.S.81/2006 passed on 01.01.2009 reached its finality and through out in further proceedings in appeal was confirmed. Therefore, defendants No.4 and 5 explained that this application is filed only to prolong the proceedings. Hence, prayed to reject the application.

4. Heard both sides. The points that arise for the consideration of this court are:

1. Whether the defendant No.6/transposed plaintiff has made out grounds to stay the proceedings in Ex.No.17/2024 and F.D.P.24/2014?

2. What order ?

5. The above points are answered as follows :-

Point No.1 : In the negative

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

REASONS

6. **Point No.1:-** As discussed above, the application came to be filed to grant stay to issue of delivery warrant of immovable properties ordered in F.D.P.No.24/2014 and Ex.No.17/2024 which has been filed to execute the order of F.D.P.24/2014. The applicant says that if the delivery warrant of immovable property is not stayed it would definitely cause injustice to her, whereas the defendants No.4 and 5 being the opponents filed detailed objections

mentioning the progress of O.S.81/2006. The objection of the opponents made out the confirmation of order of this court by the Hon'ble Appellate Court and the Hon'ble High Court of Karnataka. Therefore, Ex.No.17/2024 was filed to execute the order of F.D.P.24/2014. Once the judgment and decree of this court followed by the order passed in F.D.P.24/2014 were confirmed by the higher jurisdictional court means the Hon'ble District Court and Hon'ble High Court of Karnataka nothing is remained in the hands of this court to stay the further proceedings of Ex.No.17/2024, because the order of this court reached its finality. Suppose the order is adversely effected, the person claims to be aggrieved party can challenge it. Therefore, point No.1 is answered in the negative.

7. **Point No.2:-** In view of the findings on the above point, this Court proceeds to pass the following:

ORDER

I.A.XLIV filed by the 6th
defendant/transposed plaintiff under Section
151 C.P.C. is rejected.

No order as to cost.

(Dictated to the stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 3rd day of July 2024).

(Kamalaksha D.)

Senior Civil Judge & J.M.F.C.,
Nanjangud.