

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

Present : Sri. Ganapathi Prashanth.M, B.A., LL.B.,
Senior Civil Judge & JMFC, Nanjangud.

Dated : This the 25th day of November 2019.

Ex.No. 87/2018

DHR/s : Karyaswamy

-V/s-

JDR/s : Nagesha

I.A. U/O. 21 Rule 54 of CPC

Applicant/s : Karyaswamy

..... Dhr

-V/s-

Opponent/s : Nagesha

..... Jdr.

**ORDERS ON I.A. DATED 16.11.2019 UNDER ORDER 21
RULE 54 R/W SECTION 151 OF CPC**

The decree holder has filed the present application
U/o 21 Rule 54 R/w section 151 of CPC seeking
attachment of the execution petition schedule property of

the respondent/judgment debtor for recovery of the decretal sum.

2. The judgement debtor has filed objections.

3. Heard both sides and perused the pleadings and materials placed on record.

4. The points that arises for consideration are as follows:-

1. Whether the property of the judgment debtor can be attached for recovery of decretal amount as prayed for ?

2. What order?

5. The findings on the above points are as follows:-

Point No.1 - In the Affirmative.

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

REASONS

6. **Point No.1:-** The decree is for recovery of Rs.7,54,333/- with a future interest at 12% p.a. from the date of suit till realisation. The suit was filed on 22.02.2016.

7. The suit schedule property is Sy No.261, measuring 4 acres 28 guntas situated at Hullahalli village and post, Nanjangud Taluk. The decree holder has produced RTC extract in respect of the suit property which stands in the name of the judgment debtor. The encumbrance certificate and the guidance extract are produced by the decree holder. Considering that a huge amount is still outstanding towards decree, it is necessary to attach a property so that the decree holder would be able to get the fruits of the decree. Thus, a large portion of decretal sum is still outstanding. Without attachment of the suit property, such a huge sum cannot be recovered from the judgment debtor. Therefore, valid grounds are made out to attach the decree schedule property as prayed for.

8. However the judgement debtor filed objections alleging that already there is a mortgage created by Canara Bank, Hullahalli Branch and hence the entry in RTC in this regard and in the encumbrance certificate when

considered, the property is not free from encumbrance. Considering the said objections it is relevant to note that Sec.54 and 55 of the Transfer of Property Act does not preclude the sale of mortgaged properties. Sec.59A further emphasizes that a purchaser of property would derive title from the mortgagor is deemed to be the mortgagor. Hence, merely because there is subsisting mortgage, it cannot be a ground to reject the prayer for attaching the property. The said attachment of property is required for the purpose of effecting the same, for recovering the amount due under the decree. Hence, the objections cannot be sustained under law. Hence, Point No.1 is answered in the Affirmative.

8. **Point No.2**: In view of findings on point No.1, this Court proceeds to pass the following:-

ORDER

I.A., dated 16.11.2019 filed by the decree holder under Order 21 Rule 54 R/w section 151 of CPC is hereby allowed.

The decree schedule property shall stand attached forthwith.

Issue attachment warrant of immovable property mentioned in the I.A. accordingly.

The decree holder shall pay tom tom charges and PF required.

(Dictated to the Stenographer, transcribed by her, corrected, initialed and then pronounced by me in open Court on this the 25th day of November 2019).

(Ganapathi Prashanth.M)
Senior Civil Judge & JMFC,
Nanjangud.

**Orders pronounced in the open
court, vide separate orders**

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Senior Civil Judge & JMFC,
Nanjangud.