

ORDER ON MAINTAINABILITY

1. The Decree Holder on the issue of maintainability submits that they had filed original suit bearing No.462/2009 for eviction of the Judgment debtor and accordingly it was decreed. The JDR had challenged the same before the appellate court in R.A.No.24/2014, wherein which the Appellate Court confirmed the decree passed in O.S.No.462/2009 so far as order on evicting the JDR, but has slightly modified the damages portion and fixing it at Rs.2,000/- P.M. It is submitted by JDR that he has preferred R.S. A.No.1230/2016, before the Hon'ble High Court of Karnataka, but there is no stay and hence, this Court has no hindrance in passing an order for delivery warrant of shop premise as ordered in decree.
2. No representation by Advocate for JDR, but has filed his written arguments. Perused the written arguments filed by the JDR, it is contended that the Petition is not maintainable and the decree is not executable for the reason that the judgment and decree passed by the Court in R.A.No.24/2014 and in O.S.No.462/2009 lacks the jurisdiction over the subject matter. The DHR ought to have filed

- HRC Petition for ejectment, as the Petition property measures less than 146 Sq.ft. as admitted by DHR in one memo filed in original suit No.462/2009 dated 13.03.2013.
3. Perused the memo filed by the JDR, it is seen that the DHR has himself filed memo stating that the Petition property measures only 146Sq.ft.
 4. Now the question is whether the execution court can look into the question of whether the suit that was filed lacked jurisdiction over the subject matter and whether the decree passed by the Appellate Court in R.A.No.24/2014 is binding on this Court and that this Court cannot go behind the decree.
 5. In this regard, let us first see Section 2(3)(g) of the The Karnataka Rent Act,1999, it reads as follows:

2(3): Nothing contained in this Act shall apply

(g) To any premises used for non-residential purpose excluding premises having a plinth area of not exceeding 14 Sq.mtrs used for commercial purpose.

6. It is not in dispute in this case, that the Petition is a shop premise, it is also not in dispute that the Petition property measures less than 14 Sq.Mtrs. It is not in dispute that the original suit was filed for eviction of the JDR from the shop premise. Looking at the said Section 2(3)g of The Karnataka Rent Act, 1999, it is clear that for the Petition shop premise, the provisions of The Karnataka Rent Act is applicable. Hence, the DHR ought to have filed the HRC petition under The Karnataka Rent Act under Section 27 of this Act, as rightly pointed out by the Advocate for JDR. The DHR has not shown any reason for eviction and has obtained the decree under the hands of Appellate court in R.A.No.24/2014.
7. The decree passed by the Appellate Court and by the original Trial Court had lacked jurisdiction over the subject matter is a nullity. In this regard this Court relies on the decision passed by the Hon'ble Supreme Court in **AIR 1954 SC 340 between Kiran Singh and others V/s. Chaman Paswan and others**. It is held in this case, that the decree passed by the Court that lack jurisdiction over the subject matter is a nullity and even if the decree is passed by the Appellate Court or by any higher Court, the executing court cannot execute such

a decree and the decree so passed is a nullity and is a non-executable decree.

8. Hence, the contentions urged by the JDR that the decree is an non-executable decree on the ground that the DHR had to have filed HRC suit is correct. Hence, having no doubt regarding the measurement of the Petition property which is less than 14 Sq.Mtrs and that it being shop premise, the provisions of The Karnataka Rent Act, 1999 is applicable. Therefore, the decree passed in original suit side being contrary to Section 107 of Transfer of Property Act, wherein no rental agreement is furnished, the Petition for execution of such a decree is not maintainable. Hence, for the above reasons and findings, this Court proceeds to pass the following:

ORDER

The Petition filed by the DHR for execution of decree passed in R.A.No.24/2014 is a nullity and the decree is not executable. Hence, the Execution Petition stands dismissed.

I Addl. Civil Judge & J.M.F.C.,
Nanjanagud