

Orders on I.A.No.I and II

The Decree Holder has filed I.A.No.I u/Order XXI Rule 22 of C.P.C. and prayed for dispensation with the show cause notice to the Judgment Debtor, since the execution petition is made within 2 years from the date of the decree.

The Decree Holder has filed I.A.No.II u/Order XXVI Rule 10B R/w/Section 151 of C.P.C. and prayed for appointment of court commissioner to execute the sale deed in favour of Decree Holder on behalf of Judgment Debtor.

Heard and perused.

Records disclose that, the Decree Holder had filed a suit for the relief of specific performance of contract against the Judgment Debtor in O.S.No.415/2018. The said suit came to be decreed on 20.02.2023 and defendant was directed to execute the registered sale deed in favour of plaintiff within 3 months from the date of judgment.

Of course, the execution petition is made within 2 years from the date of the last order against the party, against whom execution is applied for. In view of the same, as per the provision of Order XXI Rule 22 of C.P.C., no show cause notice shall be necessary, where the execution application is made within 2 years from the date of decree. The present petition is for execution of decree of specific performance of contract. According to the learned counsel for Decree Holder, Decree Holder has deposited balance sale consideration of Rs.60,000/- before this court in O.S.No.415/2018. According to the decree, the Judgment Debtor is required to execute the registered sale deed in respect of E.P. schedule property.

The Decree Holder has filed I.A.No.II for appointment of court commissioner for execution of registered sale deed on behalf of Judgment Debtor. The underlying object of giving notice to the Judgment Debtor is not only to afford him an opportunity to put forward objections, if any, against the maintainability of the execution petition, but also to prevent him being taken by surprise and to enable him to satisfy the decree before execution is issued against him. Hence, it would be proper to issue notice to the Judgment Debtor and if he complies with the decree, then, there is no need for appointment of court commissioner to execute the registered sale deed on behalf of Judgment Debtor. The question of appointment of court commissioner would arise only, when the Judgment Debtor fails to comply with the decree. In this petition, the Judgment Debtor is required to execute the sale deed in favour of Decree Holder as per decree.

Further, Order XXI Rule 22(2) of C.P.C. provides that, nothing in the sub-rule(1) of Order XXI shall be deemed to preclude the court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice. Hence, for the reasons discussed above and in view of the above provision, this court is of the opinion that, issuance of notice to the Judgment Debtor in the facts and circumstances of the case is just and proper. Hence, I.A.No.I is deserved to be dismissed and I.A.No.II is kept in abeyance. Accordingly, I proceed to pass the following:

ORDER

I.A.No.I filed u/Order XXI Rule 22 of C.P.C. is hereby **dismissed.**

I.A.No.II is kept in abeyance till appearance of Judgment Debtor.

Issue cause notice to Judgment Debtor, returnable by 19.08.2023.

Sd/-

I Addl. Civil Judge & JMFC.,
Nanjangudu