

01.10.2024

Dhr: R.S.

Jdr: S.H.N.

For orders

ORDERS ON APPLICTAION UNDER ORDER 21
RULE 36 OF CPC.,

This application is filed by the Decree Holder requesting the court to issue delivery warrant to execute the same by way of affixture and proclamation as sought for in the application.

2. As per the Affidavit of the Dhr., undisputely, his father had filed a suit in O.S.No.38/1983 for specific enforcement of contract as against the Jdr No.1 and it was decreed in favour of the father of the Dhr., That during the pendency of the said suit Jdr., No.1 has sold the suit property in favour of Jdr., No.2 to 5 through different sale deeds and subsequently purchasers were impleaded as Jdr., No.2 to 5 in the said suit and it was came to be decreed on 10.06.1988 by holding that sale deed executed by the Jdr., No.1 in favour of Jdr., No.2 to 5 are not valid and enforceable and not binding on the Dhr., father. Admittedly, Dhr., father had filed Execution Petition No.12/1988 and Jdr., No.1 had filed Mis. Petition No.56/1988 seeking set aside the Judgment and Decree dated:10.06.1988 and he had also filed an application to stay the execution proceedings till disposal of Misc. Petition No.56/1988. That this court was dismissed the Misc. Petition No.56/1988 for non prosecution filed by the Jdr., No.1. Subsequently, he has filed another Misc. Petition No.7/1991 to set aside the

dismissal order of the Misc Petition. The said Misc Petitions No.60/1988 and 7/1991 were dismissed by this court. Thereafter, father of the Dhr., had filed Execution Petition No.6/1993 and subsequently it was withdrawn for technical reason and Ex. Petition No.8/1993 was filed by the father of Dhr., that Jdr., No.1 had filed O.S.No.49/1994 seeking declaration of title base on the sale deed executed during pendency of O.S.No.38/1983 and said suit was dismissed. It also reveals from the records that Jdr., No.2 to 6 have not succeeded in their attempt. That Jdr., No.6 has also approached the Hon'ble Supreme Court by filing Spl. Leave Petition challenging the Judgment and Decree of RSA No.638/2013 and it was also came to be dismissed. As per the affidavit of Dhr., the delivery warrant issued by this court has been returned with an endorsement that it was found at the time of execution of the delivery warrant that in the portion of the suit property, the distillery was put up by the Jdr., contained a stock of liquor and alcohol bottles that was seized by the Excise Department, Ramanagara and certain personnel from the Excise Department were appointed as security of the said seized stock of liquor and alcohol.

3. I have perused the Order 21 Rule 36, which reads as follows:-

“36. Decree for delivery of immovable property when in occupancy of tenant:-
Where a decree is for the delivery of any immovable property in the occupancy of a

tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.”

In the present case on hand as per the endorsement made by the jurisdictional police, it reveals that the portion of the present suit property is in the occupancy of the 3rd party who is not bound by the decree. So, as per this provision where the decree for delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree, the court shall pass order for issuance of delivery warrant, warrant to be made by affixing a copy of the order in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode. In the present case on hand considering the facts and circumstances of the present case, this court is of the opinion that it is a fit case to issue delivery warrant as provided under Order 21 Rule 36 of CPC., for its execution in accordance with law. Hence, application is filed under Order 21 Rule 36 is to be allowed. Therefore, I proceed to pass the following:-

ORDER

Application filed by the Decree Holder under Order 21 Rule 36 r/w 151 of CPC., is hereby allowed.

The Special Bailiff charges of Rs.500/- is tentatively fixed. The Decree Holder shall bare the expenses for beat of drum as per law.

Office is hereby directed to issue delivery warrant on payment of Special Bailiff charges.

Prl. Senior Civil Judge and CJM.,
Ramanagara.