

ORDERS ON I. A. NO. VI

1. IA No.VI is filed under Order XXVI Rule 9 r/w Section 151 of C. P. C. by the Judgment debtor seeking to appoint any Advocate as Court Commissioner to inspect the schedule property and also to measure the property of the decree holder as per their registered settlement deed dated 28.05.1984 to the Extent of 100 X 90 and also the property where the Judgment Debtor is carrying his business to the extent of 9 X 15 feet and also to submit the report.

2. The Judgment Debtor has sworn to the affidavit annexed to the I. A No. VI and stated that the actually the property of the Decree holder as per their registered document dated 28.05.1994 is only to the extent of East to West 100 feet and north to south 90 feet. That the property where the Judgment Debtor is doing business is beyond the extent of the property of the Decree holder measuring 100 X 90 feet. Even he has intimate these facts for having vacated and shifting his shop to the municipal property the same is intimated to the Decree holder by issuing notice dated 29.09.2015. Actually his

shop is not in the property of the DHR measuring 100 X 90 feet. Actually it is in the municipal property after the property of Decree holder. Now by taking undue advantage of the wrong boundaries mentioned in the HRC petition wherein Decree holder has no right to evict him from the municipal property which is after his property is trying to take undue advantage under circumstances to know exactly whether his shop is in the property of Decree holder measuring 100 X 90 feet or beyond the above extent. It is just and necessary to appoint any advocate as a court commissioner to measure the property of the DHR as per their registered settlement dated 28.05.1984 and also the property where he is carrying on the business to the extent of 9 X 15 feet. No loss or prejudice would be caused to the Decree holder if the application is allowed the court commissioner is appointed as stated in the I. A. If not he would be put to great loss and hardship which cannot be compensated by any means. Hence prays to allow the application.

3. The Decree Holder has filed the objection to the above I. A. No. VI denying all the contentions of the Judgment Debtor and contended that Judgment Debtor

has filed to the above application denied all the averments by the Judgment Debtor and further contended that the application is not maintainable in law and facts. That at this stage the question of appointing advocate as court commissioner will not arise and HRC case has been filed by Decree holder in the year 2004 and the proceeding is continued to delay date. That the court has decreed the petition in favour of the Decree holder against which the Judgment Debtor has preferred revision before Hon'ble High Court and has filed affidavit before the Hon'ble High Court that he would vacate the premises on 21.09.2015 and hand over the possession of the petition schedule premises to Decree holder and also had taken one year time for the same. That as per his evidence the Judgment Debtor had vacated the premises on 21.09.2015 and he has suppressed this fact before the court and has now filed this application seeking to appoint commissioner which is against law. Further the Judgment Debtor has not given any sufficient reason or cause in the above application and there is no necessity for appointing commissioner that the same type of application which was filed and dismissed with cost by III Addl. District and Sessions Judge in HRRP No. 2/2016 which is available in the record. Hence the Decree holder prays to dismiss the above application with cost.

4. I have heard the arguments. The following points arise for my consideration.

1. Whether IA No.VI filed under Order XXVI Rule 9 r/w Section 151 of C. P. C. by the Judgment debtor seeking to appoint any Advocate as Court Commissioner to inspect the schedule property and also to measure the property of the decree holder as per their registered settlement deed dated 28.05.1984 deserves to be allowed.?

2. What order?

5. My findings on the above points are as follows for the following reasons.

Point No. 1 : In the Negative.

Point No. 2 : As per final order.

REASONS

6. **Point No. 1** : On perusal of record it reveals that the decree holders have filed this execution case for the execution of the order in HRC 4/2004 dated 14-12-2011 and the same is confirmed by the Hon'ble High Court of Karnataka in HRRP 21/2013. The reading of orders in HRRP 21/2013 would disclose that the Judgment Debtor has undertaken before the Hon'ble High Court of Karnataka that he will vacate and hand over the possession of the premises within 4 weeks. However, he has not vacated the same as undertaken. There afterwards, once again he has filed an application and the Hon'ble High Court of Karnataka as per its order dated 15-10-2014 has extended one year time to the Judgment Debtor to vacate and hand over the vacant possession of the schedule premises.

7. The schedule premises is the property bearing No.2368A/1 measuring east-west:9', north-south:15'. The fact that the property bearing No.2368A/1 measuring east-west:9', north-south:15' is the property of the decree holder is not in dispute. Now, one thing is clear that, the JDR after giving an undertaking before the Hon'ble High Court of Karnataka in HRRP 21/2013 has not handed

over the possession as undertaken. The Decree holder has filed this execution petition for recovery of the possession of the petition schedule property and the Judgment Debtor has filed I.A.II under Order XXI Rule 29 r/w 151 of CPC seeking stay of further proceedings of the execution till the disposal of the suit in O.S.212/2015 which came to be dismissed and the Judgment debtor preferred revision against the said order in H. R. R. P. No. 02/2016 before III Addl. District and Sessions Judge, Ramanagaram the said revision petition was rejected with cost confirming the orders of Addl. Civil Judge & JMFC, Channapatna. Later on the execution petition was transferred to this court vide order dated 17.06.2016 by Hon'ble Prl. District and Sessions Judge, Ramanagaram in Misc. No. 08/2016. The Decree holder filed I. A. seeking for delivery of the possession of the petition schedule premises from the Judgment Debtor and at this juncture the Judgment Debtor has come on record and filed the above application seeking relief for appointment of Advocate as court commissioner in the above application for measuring the petition schedule property on the grounds that his shop is not in the property of the DHR measuring 100 X 90 feet. Actually it is in the municipal property after the property of Decree holder. Now by taking undue advantage of the

wrong boundaries mentioned in the HRC petition wherein Decree holder has no right to evict him from the municipal property which is after his property is trying to take undue advantage under circumstances to know exactly whether his shop is in the property of Decree holder measuring 100 X 90 feet or beyond the above extent. It is just and necessary to appoint any advocate as a court commissioner to measure the property of the DHR as per their registered settlement dated 28.05.1984 and also the property where he is carrying on the business to the extent of 9 X 15 feet. It is pertinent to note here that the Judgment Debtor has taken all these contentions as objections in HRC 2/2004 which was decreed against him and further on perusal of the record it reveals that Judgment Debtor has preferred an appeal against the decree of the lower court and the said appeal has been disposed off wherein Judgment Debtor has sought for time to vacate the premises. There is no further appeal against the order of the Hon'ble High Court of Karnataka and there by the decree of the court has attained finality. Under the circumstances the Judgment Debtor cannot file the above application seeking to appoint court commissioner for measurement of the petition schedule premises. Further it is also pertinent to note here that the Judgment Debtor has filed

I. A. No. II seeking to stay the execution petition under Order 21 Rule 23 r/w 151 of CPC on the similar grounds which was dismissed by the lower court and same was confirmed by the Appellate Court in HRRP No. 02/2016 wherein the Hon'ble District Judge has clearly held that the description of the petition premises in HRC No. 4/04 and the suit in O. S. No. 212/15 are one and the same and that there was no dispute regarding the boundaries of the premises and further it is held that the photograph produced by the respondents i.e., Decree holder disclosed that the property which the revision petitioner/Judgment Debtor contends that he is in possession is nothing but the premises covered under HRC No. 04/2004. It is further held that the premises which is in the possession of the Judgment Debtor is the property covered under HRC No. 04/2004 and by adopting delaying tactics the Judgment Debtor has filed O. S. No. 02/2015 suit and I. A. II to stay the proceeding in Ex. No. 60/15. Hence on these grounds the said I. A. II was dismissed with cost confirming the lower court order. The Judgment Debtor has not preferred any revision against the orders passed in HRRP No. 2/16 thereby the findings given by the court in the said order has also attained finality which is with respect to the boundary dispute which is raised in this application.

When the HRC petition is disposed off considering the above contention of boundary dispute based by the Judgment Debtor then the same thing cannot be considered in Execution proceedings.

8. In view of my above discussions, I am of the opinion that the Judgment Debtor has not made out grounds to allow the application for appointment of Advocate as court commissioner as prayed.

9. Hence, I am of the opinion that the Judgment Debtor is not entitled for any relief sought for in the application.

10. Further it can be construed that the application is an attempt to abuse the process of law with the knowledge of its falsity and hence, the same is to be deprecated and hence, I am of the opinion that the application deserves to be dismissed by imposing compensatory cost.

11. Hence I answer the above point accordingly.

12. **Point No. 2 :**

For the reasons discussed earlier in above, I proceed to pass the following order.

ORDER

IA No.VI filed under Order XXVI Rule 9 r/w Section 151 of C. P. C. by the Judgment debtor seeking to appoint any Advocate as Court Commissioner to inspect the schedule property and also to measure the property of the decree holder as per their registered settlement deed dated 28.05.1984 to the Extent of 100 X 90 and also the property where the Judgment Debtor is carrying his business to the extent of 9 X 15 feet and also to submit the report is hereby

dismissed, with compensatory
cost of Rs. 2,000/-.

(J. P. Archana)
Senior Civil Judge & JMFC.,
Channapattana.