

Orders on I.A. filed u/O.26 R.9 r/w.Sec.151 of
CPC

The counsel for the DHR has filed this application seeking appointment of any advocate or court officer to

execute the sale deed on behalf of JDR in the interest of justice and equity.

2. In support of the application, the DHR has filed affidavit stating that he has filed suit against the JDR for specific performance of contract, same was decreed in favour of DHR. After decree JDR has not come forward to follow the terms of decree. Hence he has filed this petition for execution of sale deed. Though the cause notice served upon JDRs they did not come forward to execute the sale deed and hence prayed for allowing this application.

3. The judgment debtor has filed objection to the application and contended that, without intimation without serving the copy, the DHR has filed the present application without giving opportunity. Further contended that the DHR has filed advance application on 19.09.2019 along with U/O 6 R 17 of cpc without serving the copy to the JDR. On 11.11.2019 objections taken as not filed and the same application came to be allowed. DHR has filed two sale deed and mutation register after lapse of 7 years and he has knowledge

about the schedule property. By suppressing the material facts dhr has filed amendment application which is not maintainable and barred by limitation. Further contended that jdr has preferred an appeal judgment and decree in OS No. 80/2012 in RA No.24/2016 the same is pending before Senior Civil Judge, Channapatna. The amendment sought by dhr is different and the execution petition case is different and it is no where concerned. Amendment in Ex. Petition introduce new case, change the nature and character of original suit. Hence DHR has not claimed relief as per execution petition. Further contended that amended execution petition itself is not maintainable then the question of appointment of commissioner for verification of extent of suit schedule property is not maintain under law. Hence prays to dismiss the amendment execution petition with cost.

4. I have perused the materials on record.

5. The following points arise for my determination;

1 Whether the DHR has made out sufficient grounds for appointment of commissioner to execute sale deed?

2 What order?

6. My findings to the above points are as under;

1 In the affirmative,

2 As per the final order,
for the following;

REASONS

7. **Point No.1:-** On the basis of preliminary decree the DHR has filed this application seeking to appoint Technical officer from survey department to confirm the extent in petition Sy.No. in the interest of justice and equity.

8. JDR has filed objection to the application and contended that without his knowledge amendment in execution petition carried out. Further contended he has preferred in RA.No.24/2016 pending before Senior Civil Judge and JMFC., Channapatna. Further contended that when the amendment in execution petition changes the nature and character of original suit and introduces new case in execution petition, such amended execution petition are is

not maintainable in law. Hence prays to dismiss the application. The present application came to be filed by only to identify where the property extent is situated. Hence the I.A. needs to be allowed to get conclude the proceedings and to enjoy the fruit of the decree passed in favour of the DHR. Therefore, it is necessary to allow application to confirm the extent in petition schedule property as per the preliminary decree. Accordingly, I answer the above point in the affirmative.

9. **Point No.2:** - As per the discussion made above, I proceed to pass the following;

ORDER

The application filed by
the petitioners u/O.26 R.9
r/w Sec.151 of CPC is
hereby allowed.

For further steps
28.06.2023.

Addl. Civil Judge & JMFC.,
Channaptna.

