

KARN220018122017



IN THE COURT OF PRL. CIVIL JUDGE & JMFC, AT
CHANNAPATNA

Dated: This 16th June 2026

-: PRESENT :-

SRI. YOGESHA K B.A.L. LL.M., PGDHRM
Prl. Civil Judge & JMFC,
Channapatna

Ex.P.No.34 OF 2017

BETWEEN:

1. SUBBEGOWDA
SINCE DEAD BY HIS LR'S

- 1A. SMT.ANUSUYA
W/O LATE SUBBEGOWDA
AGED ABOUT 45 YEARS
R/O BELEKERE VILLAGE
MALURU HOBLI
CHANNAPATNA TALUK.

- 1B. SHRI.MANJU B.S.
S/O LATE SUBBEGOWDA
AGED ABOUT 31 YEARS
R/O BELEKERE VILLAGE
MALURU HOBLI
CHANNAPATNA TALUK.
- 1C. SMT.VANITHA
D/O LATE SUBBEGOWDA
AGED ABOUT 29 YEARS
R/O GRAHAMANIPURA VILLAGE
KASABA HOBLI
CHANNAPATNA TALUK.

. . . DECREE HOLDER

AND

SMT.SAROJAMMA
W/O PUTTAIAH
AGED ABOUT 60 YEARS
R/O BELEKERE VILLAGE
MALURU HOBLI
CHANNAPATNA TALUK.

. . . JUDGMENT DEBTOR

Advocates.

1. Shri.CMK for DHR
2. Shri.MKN for JDR

**ORDERS ON I.A.No.07 FILED UNDER ORDER XXVI RULE
9 R/W SECTION 151 OF CPC BY THE DECREE HOLDER**

1. The present I.A.No.7 is filed by the Decree Holder under Order XXVI Rule 9 of the Code of Civil Procedure seeking appointment of the Taluk Surveyor as Court Commissioner to measure the schedule property and to fix its boundaries, contending that such local investigation is necessary for effective execution of the decree and for proper adjudication of the execution proceedings.

2. In the affidavit filed in support of the application, the applicant, who is the legal representative of the original Decree Holder and son of late Subbegowda, has stated that the original Decree Holder had instituted the present execution petition for enforcement of the judgment and decree passed in O.S. No. 12/1992. According to him, under the said judgment and decree, the Judgment Debtors were required to comply with the decree and deliver possession of the decretal property. However, the Judgment Debtors failed to comply with the said decree.

3. It is further stated that, during his lifetime, the original Decree Holder approached the High Court of Karnataka by filing W.P. No. 25094/2017, wherein, by

order dated 12.06.2017, the Hon'ble High Court directed the jurisdictional police to render assistance for implementation and execution of the judgment and decree.

4. Pursuant to the said order, this Court issued directions to the Channapatna Rural Police to assist in execution of the decree. It is averred that the police, instead of executing the decree, submitted a report dated 27.09.2024 stating that a Taluk Surveyor is required to identify and demarcate the property bearing Survey No. 136/3 measuring 0.22 guntas situated at Belakere Village, Channapatna Taluk.

5. According to the applicant, as the police were unable to identify the exact location and boundaries of the schedule property, appointment of the Taluk Surveyor as Court Commissioner has become necessary to measure the property and fix its boundaries. It is contended that such appointment is essential for proper identification of the decretal property and for effective execution of the decree. On these grounds, the applicant has prayed to allow the application.

6. The Judgment Debtor has filed detailed objections contending that the application filed by the Decree Holder seeking appointment of the Taluk Surveyor as Court Commissioner is not maintainable either in law or on facts and is liable to be dismissed in limine. It is contended that the Decree Holder is attempting to invoke Order XXVI Rule 9 of the Code of Civil Procedure at the stage of execution, which, according to the Judgment Debtor, is impermissible. The Judgment Debtor asserts that the said provision cannot be invoked in execution proceedings for identifying, measuring, or fixing the boundaries of the suit schedule property, particularly when the decree itself does not clearly and unambiguously describe and identify the property.

7. The Judgment Debtor further contends that it is a settled principle of law that the executing court cannot go behind the decree. If the decree is vague, ambiguous, or incapable of execution, the same cannot be cured or supplemented by appointment of a Court Commissioner. According to the Judgment Debtor, the present application is an attempt to travel beyond the terms of the decree, which is legally impermissible.

8. It is also contended that appointment of the Taluk Surveyor at this stage would amount to collection of fresh evidence, filling up lacunae in the Decree Holder's case, and conducting a roving and fishing enquiry. The Judgment Debtor contended that Order XXVI Rule 9 of the Code of Civil Procedure cannot be invoked to create evidence or to determine issues that were neither pleaded nor adjudicated in the original suit.

9. The Judgment Debtor further submits that the very filing of the present application demonstrates that there is a serious dispute with regard to the identity, boundaries, and measurement of the alleged suit schedule property. According to the Judgment Debtor, such disputes fall within the scope of Section 47 of the Code of Civil Procedure and are required to be adjudicated by this Court, rather than by mechanically appointing a Commissioner.

10. It is also contended that the Decree Holder had earlier sought delivery of possession and police assistance by relying upon directions issued by the High Court of Karnataka, whereas the present application seeks

measurement and demarcation of the property. According to the Judgment Debtor, this amounts to taking inconsistent and contradictory stands, thereby indicating that the decree is not self-executable and that the property is not properly identifiable.

11. The Judgment Debtor further alleges that the Decree Holder has not approached the Court with clean hands and has suppressed material facts relating to earlier execution applications, the pending execution enquiry, and the true stage of the proceedings. It is contended that the present application has been filed solely to mislead the Court and to abuse the process of law.

12. It is also pointed out that this Court has already ordered an enquiry in the execution proceedings. The Decree Holder has adduced his evidence and has been cross-examined. The matter is presently posted for defence evidence on behalf of the Judgment Debtor. According to the Judgment Debtor, filing the present application at this advanced stage is a mala fide attempt to delay the proceedings and to avoid the execution

enquiry, thereby causing serious prejudice to the Judgment Debtor.

13. The Judgment Debtor reiterates that Order XXVI Rule 9 of the Code of Civil Procedure cannot be used as a substitute for curing a defective or vague decree. Appointment of a Commissioner in the present case, according to the Judgment Debtor, would amount to rewriting or improving the decree, which is wholly impermissible in execution proceedings. Lastly, the Judgment Debtor contends that the Decree Holder has failed to establish any legal necessity or exceptional circumstance warranting appointment of a Court Commissioner. A mere assertion that such appointment is essential in the interest of justice is, according to the Judgment Debtor, insufficient to satisfy the legal requirements. On all these grounds, the Judgment Debtor has prayed for dismissal of I.A. No. 7 with costs.

14. Heard the argument of learned counsel of DHR and learned counsel for JDR. Perused the I.A.No.7, affidavit, objection and materials available on record.

15. Upon hearing the arguments and on perusal of the records the following points arise for my consideration.

1. Whether the Decree Holder has made out sufficient grounds for appointment of the Taluk Surveyor as Court Commissioner under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure to measure and demarcate the schedule property for the purpose of execution of the decree?

2. Whether the Judgment Debtor proves that the application is not maintainable in execution proceedings and that appointment of a Court Commissioner would amount to going beyond the scope of the decree and collecting fresh evidence?

3. What order?

16. My answers to the above points are as follows;

Point No.1 : In the Affirmative.

Point No.1 : In the Negative.

Point No.2 : As for the final order

for the following;

:- REASONS :-

17. **Point No.1:** The present execution petition arises out of the judgment and decree passed in O.S.

No.12/1992. The said suit was instituted by the original plaintiff, late Subbegowda, seeking declaration that he is the absolute owner of the 'B' schedule property measuring 22 guntas in Survey No.136/2 situated at Belakere Village, Malur Hobli, Channapatna Taluk. In the alternative, the plaintiff had sought partition and separate possession of 1/3rd share in the 'A' schedule property together with mesne profits under Order XX Rule 12 of the Code of Civil Procedure. The plaintiff had also sought a decree of permanent injunction in respect of the 'B' schedule property.

18. After full-fledged trial, the competent civil court decreed the suit and declared the plaintiff as the owner and person in possession of the 'B' schedule property, namely land bearing Survey No.136/2 measuring 22 guntas situated at Belakere Village, Malur Hobli, Channapatna Taluk, with specific boundaries set out in the decree. Thus, the decree not only declares the title of the Decree Holder but also identifies the decretal property by survey number, extent, village, and four boundaries.

19. The Decree Holder has now filed I.A. No.7 under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure seeking appointment of the Taluk Surveyor as Court Commissioner to measure the schedule property and to fix its boundaries. In the affidavit filed in support of the application, the legal representative of the original Decree Holder has stated that despite the decree having attained finality, the Judgment Debtors have failed to comply with the decree. It is further stated that the original Decree Holder approached the Hon'ble High Court of Karnataka in W.P. No.25094/2017, and by order dated 12.06.2017, the jurisdictional police were directed to provide assistance for implementation of the decree. Pursuant thereto, this Court directed the Channapatna Rural Police to assist in execution. However, the police submitted a report dated 27.09.2024 stating that a Taluk Surveyor is required to identify and demarcate the decretal property before effective execution could be undertaken. On this basis, the present application has been filed.

20. The Judgment Debtor has opposed the application contending that Order XXVI Rule 9 of the Code of Civil

Procedure cannot be invoked at the execution stage; that the executing court cannot go behind the decree; that appointment of a Commissioner would amount to collection of fresh evidence and filling up lacunae; that there is a dispute regarding the identity of the property requiring adjudication under Section 47 of the Code of Civil Procedure; and that the application has been filed only to delay the proceedings.

21. It is to be noted that the decree in O.S. No.12/1992 is a decree of declaration and permanent injunction. The property is described with sufficient particulars, namely the survey number, exact extent, village, and all four boundaries. Therefore, it cannot be said that the decree is vague or incapable of execution. The rights of the parties have already been conclusively determined by this court, and the decree has attained finality.

22. The primary function of an executing court is to enforce the decree as it stands. It is true that an executing court cannot go behind the decree, vary its terms, or create new rights. However, the executing court

is fully empowered to take all procedural and ancillary steps necessary to effectuate and implement the decree. Appointment of a Commissioner for local investigation, where necessary to identify the decretal property on the ground, is one such procedural aid. Such appointment does not alter the decree; rather, it facilitates execution of the decree according to its terms.

23. Order XXVI Rule 9 of the Code of Civil Procedure authorizes the Court to issue a commission for local investigation whenever such investigation is necessary or proper for elucidating any matter in dispute. The power under Section 151 of the Code of Civil Procedure is also available to make such orders as may be necessary for the ends of justice and to prevent abuse of process. In execution proceedings, where physical identification of the decretal property becomes difficult, the Court is competent to appoint a qualified surveyor to locate the property with reference to the survey records and the boundaries mentioned in the decree.

24. In the present case, the need for appointment of a Taluk Surveyor is not based on any attempt by the

Decree Holder to improve his case or to adduce additional evidence. The necessity has arisen because the police authorities, who were directed to render assistance in execution, have expressly reported that they are unable to identify the exact location of the property without a survey and demarcation by a competent revenue official. Thus, the application is founded upon a practical difficulty encountered during execution and not upon any defect in the decree itself.

25. The contention of the Judgment Debtor that appointment of a Commissioner would amount to collecting fresh evidence is without merit. The Commissioner is not being appointed to determine title, possession, or any substantive issue already adjudicated in the suit. The Commissioner is only required to measure the property and identify it on the spot with reference to the decree and relevant survey records. The report of the Commissioner will merely assist the Court in enforcing the decree and will not create or enlarge the rights of either party.

26. The further contention that the decree is vague and incapable of execution also cannot be accepted. The decree contains a complete description of the property, including the survey number, extent, village, and boundaries. The fact that a technical survey is required to locate the property on the ground does not render the decree uncertain or unenforceable.

27. The objection that the application has been filed at a belated stage also does not persuade this Court to reject the application. The execution proceedings are intended to ensure that a successful litigant obtains the fruits of the decree. When a practical impediment arises in the course of execution, the Court is duty-bound to adopt appropriate procedural measures to remove such impediment. Mere delay, in the absence of demonstrable prejudice, is not a valid ground to refuse a step that is necessary for effective execution.

28. The Judgment Debtor has not shown how appointment of the Taluk Surveyor would prejudice his rights. On the contrary, such appointment would ensure accurate identification of the decretal property in the

presence of both parties and would minimize future disputes regarding location and boundaries.

29. In view of the above discussion, this Court is satisfied that appointment of the Taluk Surveyor as Court Commissioner is necessary for proper identification and demarcation of the decretal property and for effective execution of the decree. The application does not seek to travel beyond the decree, nor does it amount to collection of fresh evidence or filling up lacunae. Accordingly, the Decree Holder has made out sufficient grounds for allowing the application, and the objections raised by the Judgment Debtor are liable to be rejected. Accordingly, Point No.1 is answered in the Affirmative and Point No.2 is answered in the Negative.

30. **POINT No. 3:** In view of findings on Point No.1 and 2 and reasons stated therein, this Court proceeds to pass the following:-

O R D E R

The I.A. No.7 filed by the Decree Holder under Order XXVI Rule 9 read with Section

151 of the Code of Civil Procedure is hereby allowed.

The Taluk Surveyor attached to the Taluk Office of Channapatna Taluk is hereby appointed as Court Commissioner with a direction to:

1. Visit the spot and identify the decretal property bearing Survey No.136/2 measuring 22 guntas situated at Belakere Village, Malur Hobli, Channapatna Taluk, Ramanagara District, with reference to the decree passed in O.S. No.12/1992;
2. Measure the schedule property and demarcate its exact boundaries as per the decree and available revenue records;
3. Fix the boundaries on the spot with the assistance of the parties, and prepare a detailed sketch/map of the property;
4. Submit a detailed Commissioner's report along with sketch to this Court within one month.

The Court Commissioner fee is fixed for Rs.5,000/- tentatively.

Decree Holder shall deposit commissioner's fee within 3 days.

Both parties are directed to extend full cooperation to the Court Commissioner for effective execution of the commission warrant.

PSI of Rural Police Station is also directed to give protection to execute the commissioner work.

Office to issue intimation accordingly to the concerned police station and also issue commission warrant forthwith if necessary process fee paid.

No order as to cost.

[Given under my hand and seal of this court on this 16th of June 2026 within the premises and during the working hours of this Court and is pronounced in an open court.]

(YOGESHA K)
Prl. Civil Judge & J.M.F.C.
Channapatana.