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Ex.No.13/2023 (Or.)

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC,
AT MAGADI.**

:-Present:-

Sri. Shrinivasa.K.R B.A.L., LL.M.,
Prl. Civil Judge & JMFC.,
Magadi.

Dated this the 24th day of November, 2025

Execution Petition No.13/2023

DECREE HOLDER : Smt.Lalithamma
W/o Puttarebanna.

:Vs:

JUDGMENT DEBTORS : Sri.Shivarudraiah S/o Late
Veeranna and others.

I.A. No.IV

APPLICANT/JUDGMENT DEBTOR No.4 :

Sri.V.Chandrashekaraiiah,
S/o Late Veeranna,
R/at Rangenahalli
Village, Solur Hobli,
Magadi Taluk,
Ramanagara District.

(JDR-4 by J.N.S., Advo.,)

:Vs:

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OPPONENT/ DECREE HOLDER:

Smt.Lalithamma,
W/o Puttarevanna,
Aged about 45 years,
R/at Honnanarayanahalli
Village,
Thyamagundlu Hobli,
Nelamangala Taluk,
Bangalore Rural District.

(Sri. K.S.L., Advocate)

**(Sri. Shrinivasa.K.R)
Prl. Civil Judge & J.M.F.C.,
Magadi.**

**ORDER ON IA.NO.IV FILED BY THE JUDGMENT DEBTOR
NO.4 UNDER SECTION 47 OF CPC.**

The Judgment debtor No.4 has filed application Under Section 47 Of CPC for determine the questions relating to execution or satisfaction of the decree.

The objection of JDR No.4 is that, the judgment and decree passed in O.S.No.102/1997 is bad for not reading the contents of Ex.P-1 in between the lines, the judgment and decree passed in O.S.No.102/1997 is bad for not considering that there is no title document in respect of item No.2 i.e.,

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Sy.No.12/2 of Rangenahalli Village, Solur Hobli,, Magadi Taluk, Ramanagara District measuring 1 acre 20 guntas of land and the judgment and decree can be executed for want of proper boundaries.

2. The JDR No.4 in support of his application filed with an affidavit sworn to by the JDR No.4 stating that, Ex.P-1 marked in the suit title document and decree holder created the document and does not contain the signature of the judgment debtor No.4. The said document speaks of only item No.1 of the suit schedule and it does not speak about the family arrangement of item No.2 of the suit schedule property. Decree holder produced an illegible document. The Ex.P-1 was not read at all in between the lines hence, the judgment passed without reading of Ex.1. The boundaries in respect of Sy.NoNo.28/1 mentioned in Ex.P-1 and in item No.1 of the suit schedule are un-executable as the correct boundaries of 15 guntas of land in Sy.No.28/1 of Rangenahalli Village is East by:land belonging to Parvathiah and Shivalingappa, West

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by:Remaining land in Sy.No.28/1, North by:land belonging to Shivanna and South by:Land belonging to Parvathaiah.

Further contended that, the correct boundaries of Sy.No.12/2 of Rangenahalli Village measuring 1 acre 20 guntas is, East by:Road, West by:Remaining land in Sy.No.12, North by: Land belonging to Puttashamaiah and now his son Paramashivaiah and South by:Road and land belonging to Shivarudraiah. The decree is un-executable as incorrect boundaries are mentioned in Ex.P-1 and in the suit schedule item No.1 and incorrect boundaries are mentioned in the suit schedule item No.2 in respect of Sy.No.12/2 of Rangenahalli Village. Hence, prays to allow the application.

3. On the other hand, the decree holder filed objection and contended that, the application filed by the judgment debtor No.4 is not maintainable either in law or on the facts. The provision of section 47 of CPC is not applicable to the judgment and decree passed in a suit for bare injunction. The JDR No.4 is disobeying the judgment and decree passed by



this Court. The court granted decree of permanent injunction against the JDR and others restraining them from interfering with the peaceful possession and enjoyment of the DHR and her mother.

Further contended that, the JDR No.4 for the first time in the instant application showing wrong boundaries of the suit schedule properties only with an intention to delay the proceedings of the petition. The Section 47 of CPC only arises in a suit for execution of document in respect of the immovable property and handing over of possession of the immovable property and in the case of auction immovable properties and not in a suit for bare injunction. Hence, prays to reject the application.

4. Even though sufficient opportunity JDR No.4 and DHR not addressed arguments on IA No.IV. Hence, arguments on IA No.IV taken as nil.

5. Upon materials placed on record, following points that arise for my consideration:



1. Whether the JDR No.4 proves that, the application filed by him is deserves to be allowed?
2. What order?

6. My answer to the above points are as under.

Point No. 1 : In the Negative.

Point No. 2 : As per order

for the following :

REASONS

7. **POINT NO.1:** The JDR No.4 filed application Under Section 47 of CPC contending that, the execution petition is not executable as decree is passed is bad for not reading the contents of Ex.P-1 in between lines and not considering that, there is no title documents in respect of Sy.No.12/2 of Rangenahalli Village and decree cannot be executed for proper boundaries.

8. On the other hand the DHR in his objection contended that, the provision of Sec.47 of CPC is not applicable to the judgment debtor which is passed in suit for bare injunction. Sec.47 of CPC is arises in respect of

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immovable property and possession of immovable property
and not suit for permanent injunction.

**9. At this juncture it is necessary to reiterate
Section 47 of CPC.**

**47. Questions to be determined by the Court executing
decree .-**

**(1) All questions arising between the parties to
the suit in which the decree was passed, or their
representatives, and relating to the execution,
discharge or satisfaction of the decree, shall be
determined by the Court executing the decree
and not by a separate suit.**

**(3) Where a question arises as to whether any
person is or is not the representative of a party,
such question shall, for the purposes of this
section, be determined by the Court**



Explanation I - For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II – (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.

On carefully reading of Section 47 it is very clear that, the application Under Section 47 can be filed only by the party

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or their representative or the purchaser of property who has purchased at sale in execution process and not by third person.

10. The principle of Section 47 is that, all questions relating to execution, discharge or satisfaction of decree which is arising between the parties to the suit in which the decree passed shall be determined by the court in execution petition. In the present case the JDR No.4 contending that, the decree is bad for not reading the contents of Ex.P-1 and contended that, there is no title documents with respect to Sy.No.12/2 and boundaries are in correct.

At this juncture it is necessary to rely the decision of Hon'ble Supreme Court reported in (1998) 3 SCC 723. Wherein the Hon'ble three Bench of Supreme Court at para No.14 held that,

Para No.14:- The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. The court can



make the adjudication on admitted facts or even on the avernments made by the resistor. Of course the court can direct the parties adduce evidence for such determination if the court deems it necessary.

11. In the present case also a detailed enquiry is not necessary because the JDR No.4 who is the defendant No.4 in O.S.No.102/1997 filed his written statement and on the basis of written statement issues framed and DHR adduced evidence and got marked documents on behalf of DHR and even though sufficient opportunity, the JDR No.4 not chosen to cross examine the DHR and the JDR No.4 adduced evidence on his behalf and two documents got marked on his behalf and after conclusion of evidence and after hearing arguments, the suit of the DHR decreed and restrained the JDR No.4 from not to interfering with the plaintiffs/DHR possession over the suit schedule property and after judgment and decree the JDR No.4 filed Appeal in R.A.No.239/2014 before the Hon'ble



Senior Civil Judge and JMFC Magadi and the Appeal was dismissed and the judgment and decree and O.S.No.102/1997 conformed. Hence, the question arisen between JDR No.4 and DHR is not determination of question Under Section 47 of CPC.

12. It is well settled principle that, the objection has to validity of decree can be raised even in execution petition if the decree is passed without jurisdiction of court but, not other reasons. The plea that, decree not executable in view of wrong boundaries and not read the contents of Ex.P-1 is not acceptable U/Sec.47 of CPC.

At this juncture it is necessary to rely the decision of Hon'ble Supreme Court filed by the decree holder reported in 1993 Supreme Court 1449. The Hon'ble Supreme Court at para No.8 held that,

Para No.8:- it may be noticed that, we are dealing with the question of nullity of a decree



because the executing court is bound to execute the decree and cannot go behind the same unless the decree passed by it is a nullity. It appears, there is a lot of confusion has to what is meant by decree being null and void. In the context which we are dealing, a decree is said to be nullity if it is passed by a court having no inherent jurisdiction. Merely because court erroneously passes a decree or there is an error while passing the decree, the cannot be called a nullity. The decree to be called a nullity is to be understood in the sense that, it is vires the power of court passing the decree and merely voidable decree.

At this juncture it is necessary to rely the decision of Hon'ble Supreme Court reported in (2004) 1 SCC 287 wherein the Hon'ble Supreme Court at para No.8 held that,



Para No.8:- A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and decree of the court which is nearly illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregular of procedure, cannot be termed in executable by the executing court, the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a Superior court failing which he must obey the command of the decree. A decree passed by a court of competent of jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings.

At this juncture it is necessary to rely the decision of Hon'ble Supreme Court reported in (1970) 1 SCC 670.



Wherein the Hon'ble Supreme Court at para No.6 held that:

Para No.6: A court executing decree not go behind the decree between the parties are their representatives it must take the decree according to its tenor, and cannot entertain any objection that, the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceedings in appeal or revision, a decree even if it be erroneous is still binding between the parties.

At this juncture it is necessary to rely the decision of Hon'ble Supreme Court reported in 2023 Live Law (SC) 936. The Hon'ble Supreme Court at para No.5 held that,

Para No.5:- a bare perusal of aforesaid provision shows that, all questions between the parties can be decided by the executing court. But the



important accept to remember is that this question are limited to the execution of the decree. The executing court can never go behind the decree. Under Section 47 CPC the executing court cannot examine the validity of the order of the court which had allowed the execution of the decree unless the courts order is itself without jurisdiction.

13. In the present case also the the plea taken by the judgment debtor No.4 that, the decree un-executivalbe in view of wrong boundaries and not produced title documents is not acceptable and moreover in a suit for permanent injunction the main issue is considerable that, the possession of plaintiff as on the date of suit. Therefore, the application filed by the JDR No.4 is deserves to be rejected. Accordingly I answer point No.1 in the **Negative**.

14. **Point No.2**: In view of above answer in Point No.1, I proceed to pass the following :

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ORDER

I.A. No.IV filed by the JDR No.4 under
Section 47 of CPC is hereby rejected.

(Directly dictated to stenographer, typed by him, then corrected
and pronounced by me in the open Court on this the **24th Day of
November, 2025.**)

**Prl. Civil Judge & J.M.F.C.,
Magadi.**

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