

KASM500003072010



**IN THE COURT OF THE I ADDL.CIVIL JUDGE AND J.M.F.C.,
SHIKARIPURA.**

PRESENT: Sri. Avinash M Ghali

(BA,LLB)

II Addl.Civil Judge & JMFC, Shikaripura
C/C I Addl.Civil Judge & JMFC, Shikaripura

EX.NO: 7/2010

DATED THIS THE 15th DAY OF NOVEMBER 2022.

Decree Holder : T.Basappa S/o Dasappa
Aged about 65 years,
R/o Gogga village
Shikaripura Taluk.

(By Sri N.C.S., Adv.)

V/s

Judgment : 1. Umesh S/o Venkataramana Shetty.
Debtors Major, R/o Haliyuru,
Shikaripura Town and Taluk.
2. Krishnamurthy S.V S/o Venkataramanappa,
Aged about: 54 years,
R/o Bhavani Rao Road,
Shikaripura Town and Taluk.

(By Sri HPJ, Adv.)

PARTIES TO IA NO.VIII

APPLICANT/ : T.Basappa S/o Dasappa
Decree Holder Aged about 65 years,
R/o Gogga village Shikaripura Taluk.

V/s

**Respondent/
Judgment Debtors** : 1. Umesh S/o Venkataramana Shetty.
Major, R/o Haliyuru,
Shikaripura Town and Taluk.

2. Krishnamurthy S.V
S/o Venkataramanappa, 54 years,
R/o Bhavani Rao Road,
Shikaripura Town and Taluk.

ORDER ON I.A.No.VIII

The present application is filed by DHR under order I Rule 10 (2) R/w Sec. 151 of CPC with prayer to strike out the JDR NO.2 on changing circumstances in order to adjudicate the matter.

2. In the affidavit annexed with present application it is stated by DHR that he has filed Ex.Petition on the basis of decree in OS.No.108/1992 and the Shirasthedar has been appointed as court commissioner to execute the sale deed but the records of rights were standing in the name of JDR No.2 on the basis of alleged will executed by JDR No.1 on 27-11-2009. During the pendancy of this Execution Petition, the katha has been changed in the name of JDR No.2 on the basis of alleged will. Hence JDR No.2 has been arrayed as party to the present proceedings. The said katha

has been challenged by the DHR before Assistant Commissioner Sagara in RA.NO.61/2020, wherein order of Tahasildar has been set aside and the JDR NO.2 had preferred Revision Misc No.76/2021 before the Deputy Commissioner, Shivamogga who dismissed said appeal on 21-04-2022. Again the katha has been changed in favour of JDR No.1, as such the JDR No.2 is not necessary party to present Execution proceeding to adjudicate the matter. Hence prayed to allow the application.

3. The JDR NO.2 did not file the objection. In spite of giving opportunity. Hence objection is taken as nill.

4. Heard the counsel of DHR and counsel for JDR No.2 and perused the material on record.

5. The following point would arise for consideration by this court:

P O I N T S

1. Whether the DHR has made out grounds to strike out JDR NO.2 as party from the present proceedings ?

2. What order?

6. Answer to the aforesaid points as below:

Point No.1: In the Affirmative.

Point No.2 : As per final order for the following:

REASONS

7. Point No.1: It is to be noted that the present Execution Petition has been initiated on the basis of decree of this court in OS.NO.108/1992 dated 18-10-2006 and this Execution Petition filed on 27-01-2010 as per decree in OS.NO.108/1992 as JDR No.1 has to execute the Registered Sale deed in favour of DHR. It is important to note that as per order on I.A.NO.V dated 03-09-2021, JDR NO.2 has been impleaded in the present proceedings on the basis of application of DHR. It is to be noted that the reason for impleading the JDR No.2 is that the mutation of suit property is standing in the name of JDR No.2 on the basis of alleged will dated 27-11-2009 alleged to be executed by JDR NO.1. whereas the JDR No.2 has claimed that JDR No.1 is dead and also produced the death certificate on record. Whereas as per DHR, JDR no.2 falsely created the death certificate of JDR NO.1.

8. Furthermore It is important to note that the alleged SV Ravikumara who is the brother of present JDR.2 has claimed that he was GPA of Umesh and said SV Ravikumar filed Civil Misc.No.2/2012 by challenging the Ex-parte decree in OS.No.108/1992 and said Civil Misc. is got dismissed.

9. It is to be noted that on perusal of contents of petition of Misc.2/2012 it is clear that the said Umesh has not at all stated anything with respect to the alleged WILL which has alleged to be executed by Umesh in favour of present plaintiff on 27-11-2009. Moreover as pleaded in the plaint by the JDR no.2 in OS no.156 of 2021, that GPA of JDR. no.1 by name SV Ravikumar is the one of the attesting witness to the said WILL, If then that is the case, SV Ravikumar being the GPA would have specifically stated in Civil Misc No.2/2012 about WILL. It is important to note that the JDHR has specifically pleaded that the death certificate of Umesh has been obtained by giving false information by the present JDR no.2 and his brother SV Ravikumar and said death certificate has been cancelled by conducting the inquiry by the District Death Registrar. Therefore the very material facts involved in OS no.156 of 2021 are with respect to whether the said Umesh died on the

alleged dated as claimed by the JDR no.2 on 20-08-2018 or not.

Furthermore JDR no.2 need to prove the alleged execution of will dated 27-11-2009 by Umesh. Nevertheless there is a decree in OS.No.108/1992 in favour of defendant and the Civil Misc.No.2/2012 is also dismissed wherein the Exparte decree has been challenged.

10. As discussed above, the JDR no.2 has been arrayed as party to the present proceedings as his name was got mutated on the basis of alleged Will alleged to be executed by Jdr no.1 and even name of JDR.2 has been deleted as per order of AC, Sagar. Thus JDR.2 is not necessary party to the present proceedings. As discussed above, it is important to note that the alleged SV Ravikumara who is the brother of present JDR.2 has claimed that he was GPA of Umesh and said SV Ravikumar filed Civil Misc.No.2/2012 by challenging the Ex-parte decree in OS.No.108/1992 and said Civil Misc. is got dismissed. Now decree in OS no.108/1992 is having legal sanctity in the eyes of Law. Therefore, DHR has made out grounds to strike out JDR NO.2 as party from the present proceedings. Accordingly, this court answered **Point no.1 in the Negative.**

11. POINT NO.2 : For foregoing reasons and discussions and findings on point no.1, this court proceeds to pass the following :

ORDER

I.A.No.VIII filed by the DHR under Order I Rule 10 of CPC is hereby allowed and Jdr NO.2 is struck out as party from the present proceedings.

For amending cause title and furnishing amended cause title

call on 17.11.2022

(Sri. Avinash M Ghali)
II Addl CJ and JMFC, Shikaripura

