

IN THE COURT OF THE
SENIOR CIVIL JUDGE & JMFC AT KUNIGAL

Dated this the 24th Day of February, 2015

P R E S E N T

Smt. **R.SHARADA**, B.A., M.L.,
Senior Civil Judge & JMFC, Kunigal

EXECUTION CASE NO.60/2013

Decree Holder : K.B.Suresh S/o Late Bajjegowda
Major, R/o Kuppe Village,
Amruthur Hobli, Kunigal Taluk

V/S

Judgment Debtor: Thimma Setty S/o Thimma Setty
aged about 60 years,
R/o Kuppe Village,
Amruthur Hobli, Kunigal Taluk

PARTIES TO I.A.NO.II & III

Applicant : K.T.Srinivas S/o Thimmasetty
aged about 40 years,
Previously R/o Kuppe Village,
Amruthur Hobli, Kunigal Taluk,
Now R/at No.30, 6th Main,
Jaimaruthinagar, 3rd Main,
3rd Main Road, Nandini Layout,
Bangalore ...Objector

V/s

Opponent : K.B.Suresh ...Decree Holder

PARTIES TO I.A.NO.IV & V

Applicants : 1. Sri Venkatesh S/o Thimmasetty
aged about 48 years,
2. Sri K.T.Suresh S/o Thimmasetty
aged about 33 years,
3. Smt. Jayalakshamma
D/o Thimmasetty W/o Krishnamurthy
aged about 38 years,
4. Smt. Bhagya D/o Thimmasetty,
aged about 36 years,
All are R/o Kuppe Village,
Amruthur Hobli, Kunigal Taluk,
...Objectors

V/s

Opponent : K.B.Suresh ...Decree Holder

ORDER ON I.A.NO.II & IV

FILED U/O 21 RULE 58 R/W SEC. 151 CPC AND
I.A.NO.III & V FILED U/O 21 RULE 59 R/W SEC. 151 CPC:

1. The Objector/applicant by name K.T.Srinivasa has filed an application in **IA No.II U/o XXI Rule 58 R/w Sec. 151 of CPC** with a prayer to order for adjudicate the claim of the objector in the schedule property, as the objector is having 1/6th share in the schedule property as co-sharer in the above case, in the interest of Justice and Equity.
2. He filed affidavit in support of the application stating that the Judgment Debtor is his father. His father is having 5 children

including himself. His father has not executed any agreement of sale in favour of decree holder and not received any sale consideration amount from the Decree holder and not delivered the possession of the schedule property in his favour. The document produced by the decree holder is concocted and created in favour of the decree holder in order knock off the schedule property. Actually, the judgment debtor has no right to execute the alleged agreement of sale, since the objector and his brothers and sisters are also having share in the schedule property. The suit property granted in favour of the JDR and occupancy rights were given on behalf of the joint family. The JDR was the kartha of the joint family and the objector and his brothers and sisters are not the parties to the alleged agreement of sale. Further, he submitted that a suit filed by himself against his father and brothers and sisters in OS No.399/2012 for partition and separate possession before the Civil Judge Kunigal with respect of the family properties including the present schedule property and got divided the properties by way of compromise. Hence, the present application is filed. Thereby he prays to allow the application as prayed for in the interest of justice and equity.

3. The same Objector/applicant has also filed another application **IA No.III U/o XXI Rule 59 R/w Sec. 151 of CPC** with a prayer to stay the execution of the sale deed, since the objector is also having 1/6th share in the schedule property as co-sharer in the interest of Justice and Equity.
4. In the supporting affidavit he has stated that his father has not executed any agreement of sale in favour of decree holder and also not received any sale consideration amount from the Decree holder and not delivered the possession of the schedule property. But the DHR has produced the concocted and created document. Actually, the schedule property and other properties got divided between the objector and other family members before the court in OS No.399/2012 and all are in possession and enjoyment of the same. Thereby, the DHR could not get any right to get execute the sale deed from the JDR or any other person, thereby he prays to allow the application as prayed for in the interest of justice and equity.
5. The other Objectors/applicants by name Venkatesha, K.T.Suresha, Jayalakshmamma and Bhagya have also filed application in **IA No.II U/o XXI Rule 58 R/w Sec. 151 of CPC** with a prayer to order for adjudicate the claim of the objectors in the schedule property, as the objectors are also

having 1/6th share in the schedule property as co-sharers in the above case, in the interest of Justice and Equity.

6. In the supporting affidavit, the 1st applicant Venkatesha has stated that he is the son of JDR and other applicants are his brothers and sisters. His father has not executed any agreement of sale in favour of decree holder and not received any sale consideration amount from the Decree holder and not delivered the possession of the schedule property in his favour. Apart from that, the schedule property is a granted land in favour of JDR who was kartha of the family. Neither himself, nor his brothers and sisters executed the alleged agreement of sale in favour of the DHR. Actually they got divided their family properties in OS No.399/2012, which was filed before the Prl. Civil Judge Kunigal and all are in possession and enjoyment of the same. With this, he prays to allow the application as prayed for in the interest of justice and equity.
7. Again the same Objectors/applicants have also filed another application **IA No.III U/o XXI Rule 59 R/w Sec. 151 of CPC** with a prayer to stay the execution of the sale deed, since the objectors are also having their 1/6th share in the schedule property as co-sharer in the interest of Justice and Equity.

8. In the supporting affidavit, 1st applicant Venkatesha has stated that his father has not executed any agreement of sale in favour of decree holder and also not received any sale consideration amount from the Decree holder and not delivered the possession of the schedule property. But the DHR has produced the concocted and created document. Actually, the schedule property and other properties got divided between the objector and other family members before the court in OS No.399/2012 and all are in possession and enjoyment of the same. Thereby, the JDR has not independent right to execute any agreement of sale as alleged by the DHR. With these, he prays to allow the application as prayed for in the interest of justice and equity.
9. In the objection statement, the DHR has stated that all the objectors are the children of JDR, having colluded with each other, in order to obtain wrongful gain, they have filed these kind of applications, which are not maintainable under law. Hence, the applications are liable to be dismissed. Actually, this court has granted judgment and decree in favour of the DHR after considering the agreement of sale and also evidence placed before it. Hence, the said judgment and decree remained unchallenged. Objectors have no any independent

rights over the schedule property as claimed in the application. The JDR remained absent at the original side, even though he has received the suit summons from the court. Thereafter, he colluded with his children filed a suit in OS No.399/2012 and got compromised the decree, now have come up with these applications which are not maintainable. Hence, the applications have to be dismissed. If these applications are not dismissed, the DHR will put to irreparable loss, which could not be compensated in any means. Hence, he prays to dismiss the applications, in the interest of justice and equity.

10. Heard the arguments and perused the records.

11. At this stage, the below mentioned points arise for my consideration:

- 1) Whether the objectors prove that the schedule property is the joint family property of themselves and the JDR?
- 2) Whether the objectors further prove that they have got 1/6th share each in the schedule property and that the Judgment and Decree obtained by them in OS 399/2012 is binding on the DHR and thereby this decree is not enforceable?
- 3) For what reliefs the parties are entitled to?
- 4) What order?

12. In order to substantiate their contentions, the applicant **K.T.Srinivasa** of IA No.II and III himself has been examined as **PW-1** and one of the applicant by name **Venkatesha** of IA No.IV and V himself has been examined as **PW-2** and got marked 7 documents as per **Ex.P.1 to Ex.P.7**. The Decree Holder has not adduced any oral and documentary evidence on his behalf, except his counsel subjected the PW-1 and 2 for cross examination.

13. My answer to the above points are as follows:-

- Point No.1 :- In the Negative
- Point No.2 :- In the Negative
- Point No.3 :- DHR is entitled to get the sale deed registered as per decree passed in OS 12/2002
- Point No.4 :- As per final order for the following:-

REASONS

14. **POINT NO.1 TO 3:-** Since these three points are interrelated, are taken up together for common discussion, in order to avoid repetition of facts.

15. During the course of arguments, learned counsel for the DHR has submitted his arguments stating that he was the plaintiff at original side i.e., in OS No.12/2002 and the Judgment Debtor was the defendant. The defendant is the

absolute owner of the suit schedule property. He had executed agreement of sale in favour of the plaintiff/DHR on 28.10.2001, agreeing to sell the suit schedule property for valuable consideration of Rs.80,000/- and received an advance of Rs.50,000/- and handed over the physical possession of the suit schedule property on the same day itself and he agreed to receive the balance consideration of Rs.30,000/- at the time of executing the registered sale deed in his favour and he always ready and willing to perform his part of contract and ready to pay the balance sale consideration. But, inspite of repeated demands and requests the JDR has failed to perform his part of contract, thereby the DHR was forced to file a suit for Specific Performance of Contract before this court. Even after receiving the suit summons, the defendant remained absent, thereby he placed exparte and the matter came for trial.

16. After trial, this court decreed the suit of the plaintiff with costs, directing the defendant to execute the registered sale deed in favour of the plaintiff/DHR in respect of the suit schedule property within 3 months from the date of Judgment, failing which the plaintiff/DHR is at liberty to get the registered sale deed executed through the court commissioner in the court at the time of getting sale deed.

17. Though the Judgment and Decree was made known to the JDR, he has not come forward to execute the sale deed in favour of the plaintiff/DHR as per the directions given by this court. Having no alternative, the plaintiff has come up with this Execution petition. Even in this Execution petition, this court has issued notice to the JDR/defendant, he has appeared through his counsel and filed objections and the case was posted to hear on merits. At this stage, the objectors who are none other than the children of JDR have come up with these applications with untenable grounds. Hence, the applications filed by the objectors are not maintainable. Further, he submitted before the court that of-course they have taken specific contention that they have filed a suit before the Civil Judge Kunigal in OS No.399/2012 for the relief of partition and separate possession of their family properties, along with the present schedule property. But, the DHR is not a party to the said proceedings. No notice was issued on him. Hence, if compromise is held in that suit or any Judgment or Decree passed on it, it is not binding on the DHR. Thereby, the contentions taken by the objectors and documents filed by them are not come in the way of this court to stop the execution of regular sale deed.

18. Further, he relied upon the decision reported in **2014(1) ICC 112** between ONGC Ltd., vs. M/s Modern Constructions and Co., thereby submitted that as per the provisions laid down ***Under section 38, Order 21 Rule 10—Execution—Executing Court cannot go behind the decree—in absence of any challenge to the decree, no objection can be raised in execution.***
19. Further, relied upon another decision reported in **AIR 2004 SC 904** between Ravinder Kaur vs. Ashok Kumar and another, thereby submitted that the ***court cannot be asked to go behind the decree and the courts should see through such deabolic plans of Judgment Debtor which deny fruits of decree to decree holder.*** With these the learned counsel for the DHR prays to reject all the applications in the interest of justice and equity.
20. Per contra, the learned counsel for the objectors have submitted his arguments stating that the JDR is none other than the father of the objectors. Their father has not executed any agreement of sale as alleged by the DHR and no sale consideration amount received by him and no possession was delivered in his favour. But, the DHR has taken decree from the hands of this court by placing concocted and created

documents only to knock off the schedule property. The suit schedule property is a granted land and the occupancy rights were given to the father of the objectors on behalf of the joint family, as he was the kartha of the family. A suit filed by the PW-1 against the JDR and other family members in OS No.399/2012 which came to be decreed through compromise and the schedule property was divided among all the sons and daughters of JDR. Now the JDR and his children are entitled to 1/6th share each in the schedule property. Hence, the DHR cannot ask for execution of the sale deed. Actually the objectors have no any knowledge of execution of the agreement of sale. They came to know when they approached the Taluk Office for change of pahani. With all these, the learned counsel for the objectors prayed to allow the applications in the interest of justice and equity.

21. Further, he relied upon the decision reported in **ILR 2012 KAR 5071** between Ismail vs. Abdul Rahiman and Others, thereby submitted that ***Occupancy rights granted to a member of the joint family who has filed Form No.7 on behalf of the family ensure to the benefit of all the other members who are eligible for a share in the land.*** He also relied upon another decision reported in **2013(2) ICC 318**

between T.N.Arun Kumar & Ors. vs. Shivanna , Basappa & Anr., and thereby submitted that ***Non-payment of balance sale consideration in 2 years from the date of decree shows the plaintiff never ready and willing to perform his part of contract. The plaintiffs cannot be permitted to contend that when once the decree, they are entitled to deposit the money at their whims and fancies.*** In the present case also the plaintiff kept quite for a period of two years. Now he has deposited Rs.30,000/- in the court. Hence, on this ground also the Execution petition is not maintainable and prays for dismissal of the same.

22. In support of the applications the objector K.T.Srinivasa has been examined as PW-1 filed affidavit evidence in lieu of examination in chief and reiterated the contents of affidavit in it and got marked 2 documents as Ex.P.1 and 2 i.e., the Judgment and Decree passed in OS No.12/2002 as Ex.P.1 and Final Decree in Os 399/2012 as Ex.P.2. He has been subjected to cross examination by the learned counsel for the DHR. In the cross examination, this witness has clearly deposed that he do not know why the DHR filed the present Execution petition. His father and himself and all his brothers and sisters are all in good terms with each other. Further admitted that he has

23. In his further cross examination, it appears that, even after knowing about the agreement of sale at Taluk Office, the PW-1 did not enquired with his father, even he has not at all enquired with his advocate, only on the basis of they got partitioned the properties, he stated that the alleged agreement of sale is concocted.
24. PW-2 has deposed in chief affidavit evidence in the lines of chief evidence of PW-1 and got marked Ex.P.3 to P.7. In the cross examination, he has given different version that he is not in good terms with his father and the present Execution Petition schedule property is his ancestral property and in their family partition, no share is allotted to their father in this property. However he also admitted that his father has not done any thing which goes against to good of their family.
25. On perusal of the documents, Ex.P.1 is the copy of the Judgment and Decree posted in OS No.12/2002 in which the DHR/plaintiff filed a suit against the JDR/defendant for the

relief of Specific Performance of contract which came to be decreed, directing the defendant to execute regular sale deed within 3 months and to plaintiff to pay balance Rs.30,000/- at the time of getting sale deed. Here the defendant/JDR has not come forward to register the sale deed. Hence, the DHR with permission of the court deposited the balance sale consideration.

26. Ex.P.2 is the final Decree passed in OS No.399/2012. In this suit, the applicant K.T.Srinivasa had filed suit against his father (JDR herein) and other applicants, which came to be ended in compromise. It is pertinent to note that the defendants herein were represented by which learned counsel, the same counsel now appearing on behalf of JDR in present Execution Petition. Hence, it cannot be said the present case proceedings are not at all known to the objectors. The other documents are also Final Decree drawn in favour of other objectors. Hence, on analysis of entire evidence placed before the court, the objectors cannot be said as totally innocent of the transaction held between the DHR and JDR under agreement of sale.

27. The Judgment and Decree passed in OS No.12/2002 filed by the DHR for specific performance of agreement of sale on

08.11.2002 has remained final and conclusive, since that has not been challenged by any one. The DHR has come with this Execution Petition for execution of judgment and decree with a prayer to direct the JDR to execute the sale deed in accordance with the decree or in the alternative to appoint a court commissioner to perform the function of the JDR.

28. The children of the JDR have filed applications as objectors objecting the execution of the judgment and decree passed in the suit referred to above on the ground that the suit property is a granted land and occupancy right was given to their father on behalf of the joint family as their father was the kartha had no right to sell the suit schedule property in favour of the DHR.

29. The objectors admitted that the schedule land is a granted land granted to their father and he was given the occupancy certificate, but claimed it was granted on behalf of the joint family. It is no where stated that all these objectors who are also the applicants along with their father and land was granted jointly in their favour. It is no where also stated when that land was granted in favour of the their father, what was their age at that the time of that grant. Besides this, the objectors have not placed any material even to presume that the land was granted in favour of the joint family for the reasons stated

above and in the above absence of placing such evidence before this court, it has to be held that the land was granted under land grant rules by the Granting Authorities in favour of the father of the applicants/objectors, will assume the category as Self Acquired property of the grantee and it does not get the cover of joint family property of family as long as the grantee i.e., the father of the applicants when he is alive. Therefore, this being the legal position, as suit filed by the JDR for partition in OS No.399/2012 and compromise decree obtained by them proved to be collusive and that will not come in the way of the DHR getting decree executed.

30. The learned counsel appearing for the objectors argued that the schedule property though was granted in favour of the JDR themselves becomes joint family property. Therefore, he has no authority to sell in favour of the DHR and that the Decree passed for specific Performance is not binding on the objectors and in support of his arguments he relied upon a decision reported in **ILR 2012 KAR 5071**. I have gone through the facts of the case and the Judgment relied by the objectors. The facts of this case in my humble opinion are divergent and that rulings is not applicable to the facts of this case, because in the decision relied by the objectors was a tenanted land

being cultivated by a family later on, the eldest son of the original tenant filed Form No.7 under Karnataka Land Reforms Act in his occupancy right was confers on the eldest son which undoubtedly ensures the benefit of all the members of the family and that the grantee of the occupancy certificate under Land Reforms Act will not become either absolute property or self acquired property of the grantee.

31. But, in the case on hand, as stated supra, it was the land granted under the land grant rules, which is self acquired property of the grantee. The collusive nature of the parties and the compromise decree in my view will not affect the interest of DHR. With this, I hold the applications filed by the applicants/objectors are devoid of merits and thereby, I hold the applications are liable to be dismissed. Hence, I hold the objectors have not made out any grounds to allow the applications as prayed for. Hence, I answer Point No.1 and 2 in Negative. Further, I hold the DHR is entitled to get the sale deed registered as per Decree passed in OS No.12/2002. Hence, Point No.3 answered accordingly.

32. **POINT NO.4**:- As per the discussion made herein above, I proceed to pass the following:-

ORDER

The applications filed by the applicants/objectors in IA No.II and IV **U/o 21 Rule 58 R/w Section 151 of CPC** and in IA No.III and V **U/o 21 Rule 59 R/w Section 151 of CPC** are hereby **dismissed**.

No order as to costs.

The Decree Holder is entitled get the sale deed registered as per the Decree passed in **OS No.12/2002**.

(Dictated to Stenographer, transcribed and computerized and print out taken by him, corrected and then pronounced by me in the open Court on this the on 24th Day of February, 2015)

(R.SHARADA)
Senior Civil Judge
& JMFC, Kunigal

ANNEXURE

1. List of witnesses examined on behalf of the applicants/objectors:

PW-1 : K.T.Srinivasa
PW-2 : Venkatesha

2. List of documents marked on behalf of the applicants/objectors:

Ex.P.1 : C/C of the Judgment and Decree
passed in OS No.12/2002
Ex.P.2 : Final Decree drawn in favour of PW-1
in OS No.399/2012

- Ex.P.3 : Final Decree drawn in favour of Suresh
in OS No.399/2012
- Ex.P.4 : Final Decree drawn in favour of
Jayalakshamma in OS No.399/2012
- Ex.P.5 : Final Decree drawn in favour of PW-2
in OS No.399/2012
- Ex.P.6 : Final Decree drawn in favour of Bhagya
in OS No.399/2012
- Ex.P.7 : RTC Extract

3. List of witnesses examined on behalf of the DHR:

N O N E

4. List of documents marked on behalf of the DHR:

N I L

Senior Civil Judge
& JMFC, Kunigal

ORDER ON I.A.NO.II TO V PRONOUNCED IN OPEN COURT, OPERATIVE PORTION READS AS UNDER

The applications filed by the applicants/objectors in IA No.II and IV **U/o 21 Rule 58 R/w Section 151 of CPC** and in IA No.III and V **U/o 21 Rule 59 R/w Section 151 of CPC** are hereby **dismissed**.

No order as to costs.

The Decree Holder is entitled get the sale deed registered as per the Decree passed in **OS No.12/2002**.

Senior Civil Judge
& JMFC, Kunigal