



**IN THE COURT OF THE ADDL. SENIOR CIVIL
JUDGE AND J.M.F.C., KUNIGAL.**

PRESENT:

Smt.Gangavva Ayatti., B.A., LL.B.(Hon's)
Addl. Senior Civil Judge & J.M.F.C.,
Kunigal

DATED THIS THE 15th DAY OF JULY 2025

Ex.No.14/2017

Decree Holder: Sri.K.Puttaraju,

(By Sri.S.P.K., Advocate)

-V/s-

Judgment Debtors: 1. Sri.Huchahonnaiah,
and 3 others

(By Sri.S.U.S., Advocate)

: I A I:

**Objector/
Intervener**

1. Sri.Bhagyamma,
W/o Bettaswamy,
D/o Huchahonnaiah,
Aged about 53 years,
R/o Taredakuppe Village,
Kottagere Hobli, Kunigal Taluk.
2. Chikkahonnamma,
W/o Lingaiah,
D/o Huchahonnaiah,



Aged about 50 years,
R/o No.87, A Main, 6th A cross,
Defence colony Village,
Bengaluru-73.

3. Sharadamma,
W/o Kumara,
D/o Huchahonnaiah,
Aged about 44 years,
R/o Singonahalli Village,
Kottagere Hobli, Kunigal Taluk.

-V/s-

Opponents : Putttaraju and others,

1.Provisions under which the application is filed	U/o XXI Rule 58(2) of CPC
2.Relief Sought for :	To come on record as objector.
3.The date on which the application is filed	17.03.2018.
4.The date on which the objections are filed by different Opponents:	22.09.2018.
5.The date on which the orders were passed on the said application :	15.07.2025.

ORDER ON IA NO.I

The objectors/applicants have filed the present
I.A.U/o 21 rule 58 (2) of the CPC to come on record as



objectors.

2. In the annexed affidavit it is contended that, the objectors are also entitled for share in the petition schedule property and they have filed the suit for partition and separate possession and such other reliefs before Principal Civil Judge Court in OS.No.223/201 by including the petition schedule property and the judgment debtors have no right to sell the petition schedule property. The petition schedule property is ancestral property and they have entitled equal share in the petition schedule property. They are not a party to the original suit, the decree holder is intentionally not made them as party to the original suit. Hence they are necessary parties to adjudicate the matter effectively. Accordingly prayed to allow the IA No.I.

3. On the other hand the decree holder has filed objections denying the averments made in the affidavit and contended that, the suit for specific performance was



filed by the decree holder came to be decreed very long back and immediately after obtaining the judgment and decree, the decree holder requested the judgment debtors to execute the registered sale deed in respect of the suit schedule property, but the judgment debtor evaded same by one or the other reasons therefore he filed the instant execution petition. After receipt of execution notice, the objector has filed suit in OS.No.223/2017 on the file of Prl. Civil Judge and JMFC court for partition in separate possession, at the behest of judgment debtor. The judgment and decree passed by this court is binding upon all the judgment debtor and their legal heirs. The judgment and decree was passed on 24.10.2005 as such the application is barred by law of limitation. The judgment debtor is absolute owner of the suit schedule property as such he had entered into agreement of sale in favour of decree holder and when the judgment debtor failed to execute the sale deed, the decree holder has filed the suit which came to be



decreed. The objector is neither owner of the property in question nor interested party. The objector cannot seek any right in instant execution petition. If they have any sort of right they can ascertain the same before the appropriate forum and certainly not in the instant case. The suit for specific performance was filed by the decree holder in OS.No.106/1996 on the file of senior civil judge at Tumakuru and the same is transferred Kunigal and re numbered as OS.No.88/2001 is came to be decreed on 24.10.2005 and immediately after obtaining the judgment and decree, the decree holder requested the judgment debtors to execute the registered sale deed in respect of the suit schedule property but the judgment debtor evaded the same by one or the other reasons which constrained to file instant execution petition filed on 24.04.2017 within time. Hence prayed to dismiss the IA.No.1.

4. In order to prove the case the objector No.1 examined



herself as PW.1 and got marked 2 documents. During the course of cross of PW1 two documents were marked as Ex.D1 and 2 and the decree holder is entered the witness box. Hence the case was posted for arguments.

5. Heard arguments from both side.

6. The points that arise for my consideration are as under;

1. Whether the applicant/objector proves that she is also having share in the suit property as such the decree passed in un-executable?
2. What order?

7. My finding on points are as under;

Point No. 1: Negative.

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

REASONS

8. **Point No.1:** In order to prove the case of the objectors, the objector No.1 examined herself as PW.1



and got produced 2 documents as per Ex.P.1 and 2. Ex.P.1 is the certified copy of the Plaint in OS.No.223/2017, Ex.P.2 is the Order sheet in OS.No.223/2017. The objector by filing affidavit in lieu of examination in chief has reiterated the averments made in the IA with affidavit and contended that, the decree holder filed false suit in OS.No.88/2001 for the relief of specific performance of contract based on created and concocted documents. After the death of her father she is also one of the legal heir as such she is also having share in the suit property. The suit schedule properties are the ancestral properties of herself and judgment debtors and there was no partition of family properties. Herself and her sisters have approached her mother and brother are demanded for share and they refused to allot the same. Therefore they filed suit in OS.No.223/2017 for the relief of partition as per Ex.P.1 and 2 and the same is pending for consideration.

9. During the course of cross examination of PW.1 she



clearly admitted that, after receipt of notice of the execution petition by the judgement debtor she has filed the suit in O.S.No.223/2017 and judgment debtor No.2 is alive and also Nanjegowda. She use to visit their houses and relation ship of herself with that of Nanjegowda and Siddagangaiah is cordial. Further she clearly admitted that she filed suit only with respect to execution property and not included all the properties. Further she admitted that she had no impediment to include all the properties. Therefore the above admissions on the part of the objector clearly goes to show that only with an intention to harass the decree holder she has filed the present IA. Further it is pertinent to note that after the death of judgment debtor Huchahonnaiah the decree holder filed IA No.III to bring the Lrs of Judgment debtor wherein objectors are shown as LRs as such on this count also the present application is not maintainable, when the application is pending for consideration.

10. During the course of arguments the counsel for



decree holder has relied upon the decision reported in ILR 1998 KAR 681 between Tukaram Vs Sambhaji and others, wherein it is held that, in a suit for partition all the properties to be included and only including alienated property and seeking partition is not maintainable. The said decision is not applicable to decide the present application. Hence in view of the above the present IA is not maintainable the same is liable to be rejected. Accordingly point No.1 is answered in the Negative.

11. **POINT NO.2:** For the reasons stated on point No.1 above, I proceed to pass the following;

ORDER

I.A No.I filed by
applicant/objectors U/order XXI rule
58(2) of CPC is hereby rejected.

No order as to costs.

(Order is dictated to stenographer on system corrected by me and then pronounced by me in the open court on this **15th day of July 2025**).

sd/-

(Smt.Gangavva Ayatti)

Addl. Senior Civil Judge and JMFC,
Kunigal.