

ORDERS ON IA NO.3

The applicant has filed IA No.3 U/o 21 Rule 101 and Sec.47 of CPC with a prayer to permit the applicant as a objector to come on record and to proceed with the case in the interest of justice and equity.

2. In the affidavit annexed to the IA, it is contended that the applicant has 1/4th share in the suit schedule property and that his father did not have the absolute power to alienate the suit schedule property in favour of DHR and his share is not demarcated and neither is the boundary fixed and came to know about the proceedings of this case recently as he is residing at Bengaluru, therefore they immediately obtained and that the DHR and the JDR have unlawfully obtained the decree without including the applicant as party and therefore it is proper and necessary to permit the applicant to come on record for the final adjudication of the dispute and among these grounds prays for the

IA to be allowed.

3. The DHR has filed her objections to the said application contending that the present application is not maintainable and it is liable to be dismissed and the applicants have sworn to a false affidavit and the suit came to be decreed after full fledged trial and now this execution petition has been filed to execute decree and the applicant has no locus standi and among these grounds prays for the IA to be dismissed.

4. Heard the arguments and perused the records carefully and meticulously.

5. The Following points are for my consideration:

1. **Whether the applicant has made out grounds to allow the application ?**
2. **What order ?**

7. My answer to the aforesaid points are as follows:

Point No.1 : In the Negative,

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

REASONS

8. **Point No.1:-** It is pertinent to note that the present IA has filed U/o 21 Rule 101 of CPC. Therefore, it is necessary to go through the provisions.

9. Sec.47 of CPC deals with questions to be determined by the Court executing the decree and it states that - all the questions arising between the parties to the suit in which the decree was passed, or their representatives relating to

1) the execution

2) discharge or

3) satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit.

10. The provision is clear that this section is applicable only with respect to questions arising **“between the parties to the suit in which the decree was passed”**. Admittedly, the applicant was not a party in O.S.No.18/2014.

Therefore, the Sec.47 is not applicable.

11. Order 21 Rule 101 deals with questions to be determined not by a separate suit, but in the execution petition itself and it states that all questions including questions relating to right, title or interest arising between a parties to proceeding on application under Rule 97 or 99 shall be determined by the executing court and not by a separate suit. Rule 97 deals with resistance or obstruction to obtaining possession by DHR or auction purchaser and in the present application the applicants are neither auction purchasers nor the DHR and therefore none of the provisions cited in the application is applicable to the circumstances as described by the applicant in IA No.3.

12. Clearly the applicant claims that the suit schedule property was the joint family property and JDR has executed an agreement of sale and the suit came to be decreed and that it is necessary to determine the 1/4th share and right of the applicant. However, it is

pertinent note that, this is an execution petition filed to execute decree of specific performance of contract and the applicants could not even be added as parties in the suit for specific performance itself and it is made clear by the Hon'ble High Court of Karnataka in **Smt.Rasheeda Banu and another Vs. Ashpakaahamad and others in W.P.No.100847/2024** where in the Hon'ble High Court of Karnataka states that - *even if the property which is subject matter of the agreement to sell is ancestral property, the non alienating members of the joint family have no locus to contest the suit for specific performance of contract.*

13. Since applicant could not have even contested the suit for specific performance, he cannot be allowed to come on record in execution proceedings. If the applicant has any rights at all, he has to agitate the same by filing a separate suit and not in this execution petition because the executing court cannot look beyond the decree and

it can only proceed to execute the decree, unless it is coram non judice. Therefore, the present application is without merits and the same is liable to be dismissed and hence, I answer point No.1 in the **Negative**.

14. **Point No.2:-** In view of my aforesaid discussion, I proceed to pass the following:

ORDER

IA.No.3 filed by the applicant U/o 21 Rule 101 and Sec.47 of CPC is hereby rejected.

No order as to costs.

Addl. Civil Judge and JMFC.,
Pavagada.

For steps by the DHR.

Call on : 22.04.2025

Addl. Civil Judge and JMFC.,
Pavagada.