

ORDER ON IA.NO.8

Judgment Debtor No.3 namely Tahashildar, Karwar Taluk has filed this application under Order XXI Rule 54 read with Section 151 CPC praying the Court to implead The Commissioner, CMC, Karwar in this case.

2. The above application is accompanied by an affidavit duly sworn to by Mr. Nishchal F. Naronha, Tahashilkda, Karwar stating that an extent of 0-36-0 including 0-1-0 'A' Karab out of total extent 1-2-0 in Sy.No.9/1 of Kodibag Village was subjected for construction of S.P. Office building in the year 1997 and accordingly award was passed by Assistant Commissioner, Karwar on 09-12-1977. Subsequent to the acquisition, KJP was undertaken by the survey department in the year 1980. The acquired land was formed into hissa No.9/1B extent 0-36-0 while the remaining extent 0-6-0 was left out in his hissa No.9/1A. The 0-6-0 which is left out was British Regime Road as revealed in the Village Map of the year 1865. Since then it has been used as road maintained by CMC, Karwar. The extent of 0-6-0 in Sy.No.9/1A in dispute was neither subjected for acquisition nor was in the possession of decree holders family at any point time. It was used as road since time immemorial. The said road was maintained by PWD and now by CMC, Karwar. Therefore the proposed Judgment Debtor namely CMC, Karwar is in possession of the said road and whatever compensation is to be recovered has to be recovered from the proposed Judgment Debtor. Hence, it is prayed to allow the application.

3. To this application, the decree holders have filed objections contending that the application is not maintainable in law and on facts. The prayer in the application is the replica of earlier application filed for impleading under IA.No.7. When similar application is dismissed as not pressed. Another application with the same prayer cannot be allowed to be filed and the same is hit by principles of res-judicata. It is further contended that the present

application IA.No.8 is styled as being filed under Order 21 Rule 54 read with Section 151 CPC. Order 21 Rule 54 CPC deals with attachment of immovable property. The provision quoted will not match with the prayer made in the application. There is absolutely no question of attachment of immovable property in this case. The proposed Judgment Debtor namely the CMC, Karwar was not a party to the original suit. No such contention that the suit land is merged in the road maintained by CMC, Karwar was taken in written statement nor was a ground in RFA or Special Leave Petition. All the contentions raised in the affidavit accompanying the application are false and denied. No such contentions can be taken in the execution proceedings which is filed to execute the decree obtained by the decree holders which attained finality. The executing Court cannot go behind or beyond the decree. With these, the decree holders have sought for dismissal of the application.

4. Having heard the arguments of both sides and upon perusal of the IA and entire records, the point that arises for Court's consideration is:

“Are there any grounds to allow the application?”

5. My answer to the above point for consideration is in the '**Negative**', for the following :

REASONS

6. On perusal of the records, it can be noticed that plaintiffs in OS.No.34/2013 on the file of this Court being decree holders herein have sued out execution of a decree for declaration and compensation passed by this Court. The decree sought to be executed reads as under :

“The suit of the plaintiffs is decreed with costs.

It is declared that all the plaintiffs are the owners of the suit schedule property.

It is further declared that the plaintiffs are entitled for compensation of Rs.12,00,000/- with interest @6% from the date of filing of the suit, till realization.

Draw decree accordingly.”

7. Based on the above decree, the decree holders have sought to recover a sum of Rs.14,14,030/- with future interest contending that the Judgment Debtors have failed to satisfied the decretal claim.

8. The Judgment Debtors have resisted the execution petition contending that they have preferred RFA No.100187/2017 which is pending before the Hon'ble High Court of Karnataka, Dharwad Bench.

9. Now the Judgment Debtor No.3 namely Tahashildar, Karwar has come up with present application seeking to implead The Commissioner, CMC, Karwar on the ground that the property in dispute is a road which is maintained by CMC, Karwar and therefore they are liable to pay the compensation.

10. The decree holders have opposed the present application on various grounds mentioned above.

11. At the outset, it is to be noted that as rightly pointed out in the objection and as pointed out by the learned counsel for decree holders that Judgment Debtor No.3 have filed similar application earlier in IA.No.7 under Order I Rule 10(2) CPC for the similar relief of impleadment. Even the affidavit filed by the Tahashildar, Karwar accompanying the said earlier application though not duly attested before a Notary or Oath Commissioner of CMO of the Court, the contends are similar. Pertinently, the said IA.No.7 got it not pressed by the learned DGP appearing for Judgment Debtor No.3, without assigning any reasons. Hence in this view of the matter, this Court is of the considered opinion that the present application is certainly hit by the principles of res-judicata as the said principle is aptly applicable to interlocutory orders in the same proceedings. Even in the present application also, the judgment debtor No.3 has not at all revealed as to why did he got the earlier application dismissed as not pressed. Therefore the present application is not maintainable.

12. Above apart, it is also pertinent to note that in fact the Tahasildar, Karwar who has filed this application is defendant No.3 in the original suit OS.No.34/2013 and judgment debtor No.3 in this execution proceedings. However in the present application also he has been shown as judgment debtor No.1 without verifying his rank in the original suit as well this execution petition. It would therefore clearly show that the present application has been filed in a casual manner just to drag the proceedings to a maximum extent possible.

13. In addition to the above, it is relevant to note that the proposed judgment debtor sought to be impleaded in this proceedings namely The Commissioner, CMC, Karwar is not at all a proper or necessary party to this execution proceedings. Because there is no decree passed against CMC, Karwar. CMC, Karwar was not a party to the original suit. In the absence of a decree passed against CMC, Karwar, the said authority cannot be impleaded at the whims and fancy or at the desire of judgment debtor No.3. Furthermore the contention urged by the judgment debtor No.3 in the present application that the property in question is a road maintained by CMC Karwar, cannot be raised for the first time in the present execution case.

14. Last but not the least, it is also relevant to note that the present application is filed under Order XXI Rule 54 CPC. This provision of law would not enable the judgment debtor No.3 to seek impleadment of a third party, because Order XXI Rule 54 CPC deals with Attachment of immovable property which is nothing to do with the prayer for impleadment asked for in the present application. It is also not forthcoming as to why Order XXI Rule 54 CPC is quoted in the present application. All these would clearly show that all is not well with judgment debtor No.3.

15. Besides being no grounds are made out by judgment debtor No.3 for impleadment of the proposed judgment debtor namely The Commissioner, CMC, Karwar, it also appears to the Court that judgment debtor No.3 has been filing application after application only with a view to prolong

the proceedings of execution without any reason and only in order to avoid the payment of decretal claim on one or the other pretext. I do not find any bonafide in making the present application.

16. Taking into consideration all the above, thus, considered, the application is divide of merits and sans substance. Absolutely no grounds are made out for impleadment of proposed judgment debtor.

17. As rightly argued by the learned counsel for the decree holders, this Court being executing Court cannot go behind or beyond the decree under execution.

18. In view of all these, the only conclusion is that the present application is nothing but a dilatory tactics to some how stall the execution proceedings, meritless and unsustainable in the eye of law. It also appears that the application is ill-motivated and frivolous also. Therefore the same is liable to be rejected with costs of Rs.3,000/-. Accordingly, answering the point for consideration in the '**Negative**', I pass the following :

ORDER

IA.No.8 filed by judgment debtor No.3 under Order XXI Rule 54 read with Section 151 CPC is **rejected on cost of Rs.3,000/-**.

For further steps by 07-03-2025.

(Dictated to the Stenographer directly on computer, typed by him, corrected and then initialed by me and pronounced in the Open Court on the 13th day of February, 2025)

Sd/-
Addl. Senior Civil Judge & JMFC,
Karwar.