

**17/01/2023**

D.Hr. by CMB

Jdr.1 by MTN

Jdr.23(1) to (7) by RRS

For Order

**ORDER ON I.A.II**

This is the application filed by the LRs. of respondent No.23 to stay the execution of decree pending before this court till disposal of the appeal.

**2.** In the accompanying affidavit the LRs. No.2 of deceased respondent No.23 stated that the FDP

No.17/2015 is arising out of the judgment and decree passed in O.S.No.123/2014. The respondents No.1 to 5 being the original plaintiffs/ petitioners have sought for effect final decree before the court in FDP No.17/2015. In which the court has referred to Tahasildar Bhatkal for making division by metes and bounds. In the suit schedule properties the Sl.No.4 in Sy.No.92/4 an area of 03-20-00 (A.G.A.) out of which 01-23-08 (A.G.A.) belongs to the plaintiffs. The LRs. of respondent No.23 have got absolute right in the property to an extent of 01-10-05 (A.G.A.) in Sy.No.92/4 of Yelawadikavur village, which was in their possession and enjoyment. During the course of preparing the Survey map and watup Takta by Revenue/ Survey officials have demarcated the said property into two parts as Block No.I and II. In which in the survey report while writing in column of Rights it is written as 'to an extent of 01-35-12 (A.G.A.) out of which an extent of 01-10-05 (A.G.A.) appears in the name of Sannayya Rama Naik with rest other to the respective sharers'. In the said Survey numbers 01-23-08 (A.G.A.) shown in the name of Mastamma Narayan Naik i.e., respondent No.1 but in the report no Block number is shown as appeared in the map with respect to Sy.No.92/4, wherein it is only depicted in the survey sketch by showing Block No.I and II.

While executing commission work in Sy.No.92/4 during the allotment of share to an extent of 01-23-08 (A.G.A.) belongs to petitioner No.1/ plaintiff No.1 is improperly designed and some parts of the land belongs to which is in possession of applicants has been carved out and handed in favour of petitioner No.1, under the circumstances the applicants have lost their valuable lands in view of the wrong measurement and survey conducted being done by the Commissioner. Due to which the valuable 10 fruit yielding coconut trees and one well have gone easily towards the share of plaintiff No.1. 01-10-05 (A.G.A.) of land is not properly shown in favour of the applicants instead it has been given in favour of petitioner No.1/ plaintiff No.1 in spite they are legally entitled. The applicants came to know about the same when the survey is conducted recently on 24-09-2021 and they constrained to prefer the appeal against the order in FDP No.17/2015 before the Senior Civil Judge Court to get justice and get back the land comprising of 01-10-05 (A.G.A.) in Sy.No.92/4. Further contended that he has preferred the appeal before the Senior Civil Judge Court in the circumstances it becomes appropriate, necessary and expedient to seek a stay of the execution of the proceedings pending until disposal of the appeal. After coming to know of the wrong

measurement in the survey, which came light recently while executing this proceedings the Survey Authority carved out their valuable portion of land in favour of the petitioner No.1, immediately separate appeal is filed as well as this application is also filed to save their property. They have not purposefully filed appeal or this application belatedly. They have got every chances of success in the appeal also. Hence for these amongst the other grounds he prayed to allow the application.

**3.** On the other hand the applicant has filed objection by contending that, the LR's. of respondent No.23 i.e., 1 to 7 are parties in O.S.No.123/2014 and FDP No.17/2015. They know all the facts and circumstance of the above said original suit as well as FDP proceeding. Before passing final order in FDP proceeding the Court Commissioner has measured the property as per the decree and divided the portions. Thereafter the petitioner has filed the Execution petition to execute the decree wherein the L.R's. of respondent No.23 is made as parties. The Court Commissioner has already deliver the possession in favour of applicant No.1 and the applicant No.1 is in possession of the said portion. Hence at this stage this Court cannot pass any order in favour of respondents

as this Court only passed Final decree proceedings. The L.Rs. of the respondent No.23 filed appeal on 10-04-2017 and same is pending for hearing. Hence for these amongst the other grounds he prayed to reject the application.

4. Heard the Learned Counsels for the parties, Perused the I.A and Affidavit and objection.

5. Under the circumstances, following point arises for consideration:-

***“Whether the applicants/ respondents No.23 (1) to (7) have made out grounds to stay the instant execution petition till the disposal of Regular Appeal No.5/2021 as prayed for?”***

6. The point framed for consideration is answered in the **Negative**, for the following;-

**REASONS**

7. This is the petition filed by the decree holders against the judgment debtors for possession of their respective shares as per the order passed in FDP No.17/2015 dated: 10-04-2017 etc., Now the petition is pending for submission of commissioner report, at this stage the applicants come up with the instant application. In the said application they themselves contended that, they have

preferred an appeal before the Hon'ble Senior Civil Judge Bhatkal against the order passed in FDP No.17/2015 by this Court. When the efficacious remedy is available to the instant petitioners before the Hon'ble Senior Civil Judge Bhatkal they again filed this instant application to stay the proceedings till disposal of the above said R.A. Further it is pertinent to note here that this Court only passed the order in FDP No.17/2015 based on the same the instant Execution Petition is filed. Such being so this Court cannot stay this execution petition. Hence for the said reasons the point framed for consideration is answered in the **Negative**. Hence, I proceed to pass the following;

**ORDER**

**The I.A.No.II filed U/Sec.151 of C.P.C.  
by the applicants/ respondents No.23 (1) to  
(7) is hereby rejected.**

**For await order, Call on 01-03-2023.**

**Sd/-**

Prl. Civil Judge and  
J.M.F.C. Bhatkal