

KAUK320004912023



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC, BHATKAL
AT: BHATKAL.**

PRESENT: KANT KURANE

B.Com. L.L.B [Spl.]

SENIOR CIVIL JUDGE & J.M.F.C, BHATKAL.

EXECUTION PETITION No. 49/2023.

DATED: 12th DAY OF MARCH-2026.

BETWEEN:

1. SRI. SHRIDHAR RAGHAVENDRA PRABHU
S/O: RAGHAVENDRA PRABHU
AGED ABOUT: 71 YEARS, OCCU.: NOT MENTIONED,
R/O: TATTIHAKLU, SHIRALI-1 VILLAGE,
BHATKAL TALUK, UTTAR KANNADA DISTRICT

----- **DECREE-HOLDER.**

[BY SRI. C. M. BHAT ADVOCATE FOR DECREE-HOLDER]

AND

1. **SRI. MOHAMMED KUNJA AHAMMED SAHEB**
SINCE DEAD BY HIS LR's:
 1. (a). SRI. HASAN BIN MOHAMMED SAHEB
AGED ABOUT: 72 YEARS, OCCU.: NOT MENTIONED,
 - 1(b). SRI. YAKUB BIN MOHAMMED SAHEB
AGED ABOUT: 70 YEARS, OCCU.: NOT MENTIONED,
 - 1(c). SMT. BIBI FATIMA W/O: HAMEED SAHEB
AGED ABOUT: 68 YEARS, OCCU.: NOT MENTIONED,

- 1(d). SMT. SARABI W/O: MAIDEEN SAHEB
AGED ABOUT: 66 YEARS, OCCU.: NOT MENTIONED,
- 1(e). SMT. HAZIRABI W/O: KUNJA AHAMMED SAHEB
AGED ABOUT: 64 YEARS, OCCU.: NOT MENTIONED,
- 1(f). SRI. ABADUL REHAMAN BIN MOHAMMED SAHEB
AGED ABOUT: 62 YEARS, OCCU.: NOT MENTIONED,
- 1(g). SRI. USAMAN BIN MOHAMMED SAHEB
AGED ABOUT: 60 YEARS, OCCU.: NOT MENTIONED,
- 1(h). SRI. ABDUL KHADIR BIN MOHAMMED SAHEB
AGED ABOUT: 58 YEARS, OCCU.: NOT MENTIONED,
- 1(i). SMT. LATIFABI W/O: SHARIF SAHEB
AGED ABOUT: 56 YEARS, OCCU.: NOT MENTIONED,
- 1(j). SRI. IRASHAD BIN YUSHIF SAHEB
AGED ABOUT: 54 YEARS, OCCU.: NOT MENTIONED,
- 1(k). SMT. ZEENAT W/O: MAIDIN SAHEB
AGED ABOUT: 52 YEARS, OCCU.: NOT MENTIONED,
- 1(l). SMT. FAIYAZ W/O: YUSUF SAHEB
AGED ABOUT: 50 YEARS, OCCU.: NOT MENTIONED,
2. SMT. ISHABI W.O: MOHAMMED SAHEB
DEAD BY HER LR's ARE JDR. No. 1[a] TO [l].
3. SRI. S. HASAN SAHEB S/O: KUNJA AHAMMED SAHEB
AGED ABOUT: 72 YEARS, OCCU.: NOT MENTIONED,
4. SRI. HASANAR MOHAMMED SAHEB
AGED ABOUT: MAJOR YEARS, OCCU.: NOT MENTIONED,

5. SRI. ABDUL KHADIR MOHAMMED SAHEB
AGED ABOUT: MAJOR YEARS, OCCU.: NOT MENTIONED,
6. SRI. USAMAN MOHAMMED SAHEB
AGED ABOUT: MAJOR YEARS, OCCU.: NOT MENTIONED,
7. SMT. JAINABI W/O: HASAN SAHEB
AGED ABOUT: MAJOR YEARS, OCCU.: NOT MENTIONED,
8. SMT. BIB ISHA W/O: HASAN SAHEB
AGED ABOUT: MAJOR, OCCU.: NOT MENTIONED,
9. SRI. KUNJA AHAMMMED SAHEB
AGED ABOUT: MAJOR, OCCU.: NOT MENTIONED,
10. SRI. SALEEM AHAMMED SAHEB
AGED ABOUT: MAJOR, OCCU.: NOT MENTIONED,
11. SRI. SHIDDIQUE AHAMMED SAHEB
AGED ABOUT: MAJOR, OCCU.: NOT MENTIONED,
ALL ARE R/O: CHITRAPUR ROADM SHIRALLI-2 VILLAGE,
BHATKAL TALUK, UTTAR KANNADA DISTRICT.

----- **JUDGMENT-DEBTORS.**

**[BY SRI. RAKSHIT R. SHRESTY & SRI. GANESH M. DEVADIG ADOCATES
FOR JUDGMENT-DEBTOR No.3]**

**[THE JUDGMENT-DEBTOR NO.1 [a] TO [I], 2 & 4 TO 11 PLACED
EX-PARTE]**

PARTIES TO THE INTERIM APPLICATION NO.III.

BETWEEN:

1. SRI. SHRIDHAR RAGHAVENDRA PRABHU
S/O: RAGHAVENDRA PRABHU

----- **APPLICANT.**
[ORIGINAL DECREE-HOLDER].

AND:

1. SRI. MOHAMMED KUNJA AHAMMED SAHEB
SINCE DEAD BY HIS LR's: AND OTHERS

----- **OPPONENTS.**
[ORIGINAL JUDGMENT DEBTORS]

DETAILS OF INTERLOCUTORY APPLICATION AS PER CIRCULAR NO. R.J.163/2023

DATED 24.08.2023 AND IN WP NO. 201865/2023.

Provision under which application is filed	U/O XXVI RULE 10(c) R/W SEC. 151 OF CPC.
Relief sought for	FOR APPOINTMENT OF COURT COMMISSIONER
The date on which the application is filed	28/07/2025.
No. of application	I A No. III.
Date on which the objections are filed by different opponents	13/10/2025.
The date of order.	12/03/2026.

Sd/-
KANT KURANE
SENIOR CIVIL JUDGE, BHATKAL.

ORDER ON INTERIM APPLICATION NO. III.

The present I A No. III is filed by Decree-holder/applicant by name Sri. Shridhar Raghavendra Prabhu under Order XXVI Rule 10 (c) R/W Section Sec.151 of CPC., seeking relief to appoint Court Commissioner to execute regular sale deed in respect of suit schedule properties.

2. In the affidavit, it is stated that the applicant/decree-holder was plaintiff in O.S No.23/2003 before this Court and contended that in the present case except Judgment-debtor No.3, other all remaining Judgment-debtors are not appeared before the Court and they have not disputed the petition filed by the Decree-holder. Further, it is contended that the Decree-holder has filed the above suit for specific performance of contract. Hence, appointment of Court commissioner is absolute necessary to execute regular sale deed.

3. In the petition, it is stated that the present Decree-holder/applicant has filed O.S No. 23/2003 before this Court and after hearing the matter, this Court has passed judgment and decree dated 17/4/2006 in favour of Applicant/ Decree-holder, directing the Judgment-Debtors to execute regular sale deed in pursuance of agreement of sell dated 31/12/1994 within 60 days. But, the Judgment-

Debtor No.1 to 3/opponents have filed RFA No.1325/2006 before the Hon'ble High Court of Karnataka, Dharwad Bench. Further, on 3/11/2022, the Hon'ble High Court of Karnataka has dismissed the appeal and confirmed the judgment and decree of this Court.

4. Further, it is contended that during the pendency of O.S No. 23/2003, the defendant No.1 and 2 were died and their LR's have been brought on record as defendant No.1(a) to (l) and their names have been entered in the Revenue records in the suit schedule properties and they have also parties to the suit. Hence, prays to appoint the Court Commissioner to execute regular sale deed in favour of Decree-holder/applicant as relief sought in O.S No. 23/2003.

5. On receipt of petition and after registering the petition, this Court has issued notice to all the Judgment-debtors. The notice to Judgment-debtor No.1(1), 2(1), 1(2), 2(2), 1(6), 2(9) and Judgment-debtor No.8 were duly served but, they remain absent. Hence, they have been placed exparte. Further, the notices to Judgment-debtor No.1(7), 1(8), 2(7) and 2(8), 4 to 6 and 10 were returned with an endorsement that the above said Judgment-debtors have left the Country. Further, then notices to Judgment-debtors No.1(3), 2(3), 1(4), 2(4), 1(5), 2(5), 1(9), 2(9), 7 and 11 were returned as not found. Further, the notices to

Jdr No.1(b), 4 and 8 were duly served but, they have also remain absent before this Court and hence, they have also placed ex parte. Further, notices to Judgment-debtor No.7 and 9 returned as unclaimed and on the date of their appearance, they remain absent. Hence, the Judgment-debtor No. 1(f) and 1(l), 7, 9 were placed ex parte, stating that the notice issued to the above Judgment-debtors are held sufficient. Further, notice to Judgment-debtor No.1(d) and (e) were duly served but, they remain absent. Hence, they have placed ex parte. Further, notice to Judgment-debtor No.1(c) was returned as not known and notice to Judgment-debtor No.1(i) and (j) returned as insufficient address. Hence, the notice to Judgment debtors No.1(i) and (j) was issued through RPAD but, the said notices were also returned as unclaimed. Hence, Judgment-debtors No.1(i) placed ex-parte. Further, notice to Judgment-debtors No.1(k) was issued but, said notice was also returned as not claimed and the said Judgment-debtor was placed ex-parte holding that notice unclaimed is held sufficient service of notice. Further, in addition of above the notices to Judgment-debtors No.4 to 7, 9, 10, 11, 1(f), 2(f), 1(c), 2(c), 1(d), 2(d), 1(i) to 1(l), 1(g), 5, 1(h) and 6 were issued through daily news paper and through serve the notice to elder the members of their respective families by filing I.A.No.I and II. But, on the

date of their appearance, the above said all Judgment-debtors remain absent before the Court. Hence, they have all placed exparte.

6. In response to the notice, the Judgment-debtor N.3 appeared through his Counsel and filed his detailed objections, denying the content of I.A.No.III and contended that the application filed by the Decree-holder, seeking appointment of Court Commissioner to register the sale deed is not maintainable and there are no sufficient grounds to appoint Court Commissioner. Further, it is contended that the application filed by the Decree-holder is pre-matured and not maintainable, as the boundaries and identity of the property to be conveyed under the Decree have not been fixed or demarcated. So, without proper identification of property, no valid execution can be carried out. Further, it is contended that non-appearance of legal heirs of respondent No.1 and 2 cannot be used as ground to appoint a Commissioner. Further, it is contended that the execution of sale deed by Court Commissioner without resolving the boundaries dispute and without notice to all the interested parties could lead multiplicity of proceedings and cause grave prejudice to this Judgment-debtor No.3. Further, it is contended that Decree-holder if argued by the non-execution of sale deed by the Judgment-debtor No.1 and 2 has alternative remedy under the Civil Procedure Code and he

cannot invoke Order XXVI Rule 10(C) of CPC mechanically. Further, no steps have been taken by the Decree-holder to comply with the mandatory requirements like clarifying the nature of the property, title or encumbrance before seeking execution through Commissioner and also this Court has not passed any error contemplated U/Sec. 50 of CPC. Hence, the present application is filed by the Decree-holder only harass and prejudice the judgment-debtor No.3. Hence, prays to dismiss the I.A.No.III for the interest of equity and justice.

7. Heard oral arguments both side and perused entire material records.

8. On careful perusal of facts and circumstance, the points would be arise for consideration are:-

: P O I N T S:

1. **Whether the applicant/decree-holder has establish that the appointment of Court Commissioner Under Order XXVI Rule 9 R/W Section 151 of CPC is absolutely necessary for final adjudication of petition?**
2. **What order.?**

9. On careful scrutiny of above documents, my findings to the above points are:

: FINDINGS :

POINT No.1 : **In the Affirmative.**

POINT No.2 : As per my final order for the following:

: REASONS :

10. **POINT NO.1:-** Admittedly, the present petition is filed in pursuance and for enforcement of judgment and decree of this Court in its O.S No.23/2003 dated 17/4/2006 and in pursuance of judgment of Hon'ble High Court of Karnataka in its RFA No.1325/2006 (SP-) dated 03/11/2022 confirming the judgment and decree of this Court.

11. It is stated that the Decree-holder has filed OS No. 23/2003 before this Court against the Judgment-debtors, seeking relief to Specific Performance of Contract, directing the Judgment-debtors to execute regular sale deed as per the terms and conditions entered into an agreement of sell dated 31/12/1994. Further, it is stated that after full fledged trial, this Court has passed judgment and decree in favour of plaintiff on 17/4/2006 and directed the Judgment-debtors to execute regular sale deed in respect of 'A' suit schedule properties. But, the present Judgment-debtors have filed RFA No.1325/2006 before the Hon'ble High Court of Karnataka, Dharwad Bench. The Hon'ble High

Court of Karnataka has heard the matter and the Appeal of Judgment-debtors was dismissed, confirming the judgment and decree of this Court. Hence, prays to appoint the Court Commissioner for the interest of justice and equity. In the instant case, except Judgment-debtor No.3 all remaining Judgment-debtors have not appeared before the Court and they have not disputed the petition. But, Judgment-debtors No.3 has appeared and disputed the application on several grounds.

12. I have carefully gone through the entire material records. A perusal of Judgment and decree of this Court in its O.S No.23/2003, it is noticed that the present Decree-holder has filed suit for the relief of specific performance of contract, directing the Judgment-debtors to execute regular sale deed as per the terms and conditions, stating in agreement to sell. Further, on close reading of judgment of this Court in O.S No.23/2003, it is seen that the Judgment-debtors have entered into an agreement with plaintiff, agreeing to sell land and building for total consideration amount of Rs. 1,25,000/- in Sy.No.826/12 measuring with extent to 0-2-0 situated at Shirali-2 village of Bhatkal Taluk. Further, it is seen that the Decree-holder has paid entire sale consideration amount of Rs.1,25,000/- to the judgment-debtors as per the terms and conditions of agreement of sell dated 31/12/1994.

Further, it is noticed that the suit filed by the Decree-holder came to be decreed with costs and the Judgment-debtors have been directed to execute the registered sale deed in respect of 'A' suit schedule property in favour of the Decree-holder within 60 days. Further, on perusal of certified order copy of Hon'ble High Court of Karnataka in its Regular First Appeal No.1325/2006(SP-) decided on 03/11/2022, it is seen that the above said Judgment-debtors have preferred an Appeal before the Hon'ble High Court of Karnataka and it is seen that after hearing the matter, the Hon'ble High Court of Karnataka has dismissed the Appeal of the Judgment-debtors, confirming the Judgment and decree of this Court.

13. In the instant case, except Judgment-debtors No.3 remaining all Judgment-debtors are not before the Court and they have not disputed the petition as well as I.A.No.II. The Judgment-debtors No.3 has disputed the I.A.No.II contending that the appointment of Court Commissioner is not maintainable as the application itself is pre-matured and there is no records to identify the boundaries and property and contended that the Decree-holder has right to get alternative other remedies under the Civil Procedure Code. But, the Judgment-debtor No.3 has not disputed the Judgment and Decree of this Court and he has

not produced any records to show that the Judgment-debtor No.3 has preferred Appeal before the Hon'ble Apex Court against the Judgment of the Hon'ble High Court of Karnataka. So, the objections raised by the Judgment-debtors No.3 are not sufficient to reject the I.A.No.II.

14. In the instant case, the Appeal preferred by Judgment-Debtors before the Hon'ble High Court of Karnataka is dismissed and this Court has already directed the Judgment-debtors to execute regular sale deed in favour of Decree-holder within 60 days and that of Judgment-debtors have not executed regular sale deed in favour of Decree-holder. Hence, it is necessary to appoint the Court Commissioner to execute Regular sale deed in favour of Decree-holder on behalf of the Judgment-debtors. Hence, the Decree-holder has made out sufficient grounds to allow the I.A.No.II. Therefore, ***I answer Point No. 1 in the Affirmative.***

15. POINT NO.2: As reasons discussed supra, I proceed to pass the following:

: O R D E R:

**The I.A.No.III Under Order XXVI Rule 10(C)
R/W Section 151 of CPC., filed by the
applicant/Decree-holder against the Judgment-
debtors is hereby ALLOWED.**

Further, the learned Counsel Sri. Umesh N. Naik, Advocate, Bhatkal is appointed as Court Commissioner to execute regular sale deed as per the terms and conditions of agreement of sell dated 31/12/1994 in favour of Decree-holder in respect of suit land and building bearing its Sy.No.826/12 measuring 0-2-0 situated at Shirali-2 village of Bhatkal Taluk.

The Court Commissioner's fee is fixed at Rs.10,000/-.

The Court Commissioner is directed to execute regular sale deed on behalf of Judgment-debtors in favour of Decree-holder pertaining to above said suit land and building bearing its Sy.No.826/12 measuring 0-2-0 situated at Shirali-2 village of Bhatkal Taluk in terms and conditions of agreement of sell dated 31/12/1994 and submit his report on execution of regular sale deed.

The Decree-holder has directed to deposit Court Commissioner's fees.

[Dictated to Stenographer directly on computer, typed by her, corrected by me and then pronounced in the Open Court on this 12th day of March-2026]

Sd/-

KANT KURANE

SENIOR CIVIL JUDGE, BHATKAL.