

KAUK510000752009



ORDERS ON I.A. NO.VII

The present application is filed by the third party applicants under Order XXI Rule 97 R/w Section 151 of C.P.C to permit them to participate in the proceedings and to determine their rights.

An affidavit is annexed with the instant application wherein, one of the applicant i.e., Sri. Santosh S/o Somaning Javalkar is the propositus of the family who had four sons i.e., Hanumanth, Kedari, Somaning and Bhimarai and daughter by name Smt. Bayavva. The said propositus was cultivating some of the suit properties along with his four sons during his lifetime and after his demise, some properties have been granted to his sons in their individual capacity and in view of oral partition, they are all in their respective possession but, till today, the revenue records stands jointly in between the JDRs and family members of applicants.

It is further stated in the affidavit that, the second son of propositus by name Sri. Kedari has four sons i.e., present debtors and the decree holder has

entered into sham and bogus agreement of sale with judgment debtors in respect of land bearing Block No.139/7 by playing fraud on JDRs and also filed O.S No.105/2008 for specific performance of contract and the same was compromised in collusion between them. The said fact was came to the knowledge of the applicants very recently and DHR intends to dispossess the applicants from the suit property. Without consent and knowledge of the applicants, the DHR and JDRs have made a transaction amongst them. The judgment debtors since from inception have taken contention that, the decree holder has got executed agreement of sale by playing fraud and obtained a fraudulent decree but, the judgment debtors did not take any steps to cancel the compromise decree. As such, the applicants and others will loose their legitimate share in the suit property. There is no partition between father of the JDRs and father of the applicants and as such, the present execution petition is not maintainable.

It is further stated that, O.S No.04/2023 is pending before the Hon'ble Senior Civil Judge, Haliyal for partition and injunction between the children of JDRs and the applicants wherein, restraining order was passed to not to alienate the suit property and as such, it is necessary to implead the

applicants in this petition. The DHR has misguided this Court and obtained sale deed in his name through Court Commissioner. Unless and until, the legitimate share of the applicants is determined, the decree holder cannot claim any relief. With this, the applicants pray to allow the application.

On the other hand, the DHR has filed objections to the instant application and contended that, the present application is filed by the third party at the instigation of judgment debtors and the same is barred by law of limitation and there is no stay of proceedings. It is further contended that, the intention of third party applicants is only to cause obstruction in the smooth disposal of this petition. The applicants have pleaded fraud regarding the decree and such kind of contention cannot be decided in this case. With this, the DHR prays to reject the instant application.

Perused the entire materials.

The decree holder has obtained compromise decree in O.S No.105/2008 dated 02.03.2009. More than 15 years have been lapsed and at this stage, the present applicants have filed the instant application under Order XXI Rule 97 of C.P.C. It is to be noted that, earlier also similar applications have been filed by the third parties i.e., Sri. Namadev S/o Parashuram Javalkar, Sri. Laxman S/o Mahadev Javalkar, Sri.

Rama S/o Mahadev Javalkar, Sri. Maruti S/o Sahadev Javalkar and Sri. Avinash S/o Nakul Javalkar and the said application was already rejected by this Court by holding that, the applicants in I.A No.III were not covered by Order XXI Rule 97 of C.P.C. Even in the present application, the present applicants have invoked Order XXI Rule 97 of C.P.C which is not available to them.

On going through the Order XXI Rule 97 of C.P.C., it clearly goes to show that, the application under Order XXI Rule 97 of C.P.C could be filed by either decree holder or the purchaser of any property sold in execution of a decree if anybody resist or obstruct in obtaining possession of the property by such decree holder or purchaser of property sold in execution of a decree. In the present case, the third party applicants are neither decree holder nor purchaser of the property sold in execution of a decree.

Apart from the above, though the applicants claim that, they belong to same family and they have got rights in the petition schedule property but, in support of the same, they have not produced any documents. Along with instant application, the applicants have produced copy of plaint, copy of I.A and copy of injunction order in O.S No.04/2023 but,

the said documents will not assist the applicants to show that, they are concerned to the petition schedule property. It appears that, only to obstruct the decree holder in enjoying the fruits of decree, colluding application has been filed by the applicants. Hence, the application is deserves to be rejected. Accordingly, Court proceeds to pass the following:

ORDER

I.A No.VII filed by the applicants under Order XXI Rule 97 R/w Section 151 of C.P.C is hereby rejected.

No order as to costs.

For hearing on I.A No.V on the side of the JDRs as finally, call on 25.01.2025.

**Civil Judge and J.M.F.C.,
Haliyal**