

**IN THE COURT OF CIVIL JUDGE AT HARAPANAHALLI**

**Present: Sri.Prakash Arjun Banasode B.A. LL.B.,**  
Civil Judge & JMFC.,  
Harapanahalli.

**Execution Petition No.36/2007**

**Dated 29<sup>th</sup> Day of OCTOBER - 2015**

**Decree Holder:** Gangyanaik S/o Shivyanaik,  
Age:50 years, Hindu, Agriculturist,  
R/o Garbagudi Thanda Village in  
Harapanahalli Taluk, Davanagere  
District.

**V/s**

**Judgment**  
**Debtors:**

- 1) Peekla Naik S/o Veerayanaik,  
Aged about 45 years, Hindu,  
Agriculturist, R/o 1<sup>st</sup> Main, 3<sup>rd</sup> Cross,  
Benkinagaa(Benkipura) Village, in  
Harihar Town, Davanagere District.
- 2) Smt. Kuruvathi Kariyamma,  
W/o Durugppa, Aged about 55 years,  
Hindu, Agriculturist, R/o Garbagudi  
Village, in Harapanahalli Taluk,  
Davanagere District.

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**:: ORDER ON EXECUTION PETITION U/O 21 R. 11 OF**  
**CPC FILED BY THE DECREE HOLDER::**

1. This is an execution petition U/o.21 R.11 of CPC filed by the decree holder for seeking to execute the decree passed in O.S.No.94/2006 against the present JDrs No.1 and 2 in respect of petition schedule properties.

2. The decree holder in his annexed affidavit in support of execution petition contends that he filed the suit against the present JDRs No.1 and 2 for specific performance of contract in respect of petition schedule properties in O.S.No.94/2006 on the file Civil Judge and JMFC Harapanahalli. The said suit was came to be decreed on 19-04-2007. It is decreed that the present JDR's have to execute registered sale deed in favour of DHR in respect of petition schedule properties and also directed them to deliver the possession of the petition schedule properties in favour of DHR. But the JDR's have not come forward for executing the registered sale deed and delivery of possession in favour of DHR. The JDR's have to obey the said decree. It is submitted that the JDR has disposed off the petition schedule item No.2 property bearing Sy.No.157/EP1 measuring 3 acres of Haluvagalu Village to the 3<sup>rd</sup> party. The JDR well aware and know about the decree passed in O.S.No.94/2006. In the said suit the JDR has also appeared through his advocate with intentionally caused loss and harass the decree holder and disposed the petition schedule item No.1 property of in favour of one Kuruvathi Kariyamma. The said Kariyamma well aware about the sale agreement with fully knowledge but she entered in to the sale transactions with the JDR. She does not entitlte any land through the sale deed. Therefore, it is prayed to direct the JDR's to execute the registered sale deed and to deliver the possession of the petition schedule

lands in favour of DHR. In case the JDR's failed to execute the registered sale deed and failed to delivery of possession of the petition schedule lands the court may pleased to appoint a court commissioner to perform the duty as per decree passed in O.S.No.94/2006 dated: 19-04-2007. Therefore it is prayed to allow the execution petition.

3. Per contra, JDRs have filed the objections to the execution petition. The contents of the objections of the JDr are as under:

The JDR is the age old persons and he was suffering from Jaundice during the period when the case was pending before this Hon'ble court. Therefore, the JDR was unable to attend before the court and to meet his counsel. For non appearance of JDR before this court, this court was pleased to pass an exparte judgement in favour of DHR.

The JDR has preferred an appeal before the Hon'ble Senior Civil Judge, Harihara in R.A.No.82/2007. Moreover, to the safer side the JDR has also filed miscellaneous petition before this court in C.Misc. No. 8/2007. Both the appeal and C.Misc. are pending before the respective courts. Moreover, the the JDR is not in possession of the petition schedule properties as he has sold petition schedule properties to the 3<sup>rd</sup> party. Therefore, the present petition and the original suit both are bad for nonjoinder of

necessary parties. Therefore it is prayed to dismiss the execution petition.

4. The JDR No.2 has also filed objections to the execution petition wherein it is contended that she filed suit in O.S.No.70/2012 against the defendants for declaration and permanent injunction in respect of suit schedule property. The decree holder filed execution petition for execution of registered sale deed as per the judgement and decree passed in O.S.No.94/2006. She had purchased the suit schedule property from the JDR No.1 through registered sale deed dated: 29-01-2007 for valuable consideration of Rs.1,50,000/-. She is the poor agriculturist, the JDR No.1 in collusion with one another filed suit in O.S.No.94/2006 before this court and obtained exparte decree. As per the decree the decree holder filed this execution petition before this court. Recently, the DHR filed application for impleading her in this case. On the basis of the registered sale deed dated: 29-01-2007 all the revenue records were changed in her name and therefore she is the absolute owner and possessor of the petition schedule property. even to this day. The decree holder obtained decree on 19-04-2007. Before passing of the said decree she is the owner and is in possession of the petition schedule property. This fact is very much within the knowledge of the DHR. At that time the DHR had not impleaded her as party to the suit.

Subsequently, at the final stage of the execution petition impleaded her as party to the proceedings. The facts of this case and execution petition are directly substantiated in issue. This being the case the DHR issued notice to her on 03-02-2012 by stating that he filed execution petition on the file of this court on the basis of alleged ex parte decree against the JDR No.1 in respect of suit schedule property for Specific Performance of Contract in O.S.No.94/2006 on the file of Civil Judge, Harapanahalli. She also received court notice along with application U/s 50 of CPC. The said application is still pending. Since the date of sale deed she has been peaceful possession and enjoyment of the petition schedule land even to this day. Prior to the sale deed her vendor was in possession of the said land. The DHR and JDR No.1 are colluded with each other and got obtained ex parte decree dated: 19-04-2007 in O.S.No.94/2006. She has not party to the sale to the suit. The said decree is not binding on her rights. The petition schedule land mutated in her name through M.R.No.117/2006-07. The JDR No.2 un-necessarily caused obstruction and interference in the peaceful possession and enjoyment of the petition schedule land. After filing of application U/s 50 of CPC. This year she ploughed the petition schedule land for sowing the land as the rainy season is started. The DHR is illegally trying to trespass in to the petition schedule land and causing illegal interference and obstruction. She resisted the illegal act of

the DHR. Therefore, it is prayed to dismiss the petition.

The objector filed an application U/o 21 Rule 58 R/w 151 of CPC for seeking to set aside the order dated: 03-04-2013 for delivery of possession of the objector's land. In the annexed affidavit in support of the application it is contended that the DHR filed execution petition for execution of registered sale deed as per judgement and decree passed in O.S.No.94/2006. He purchased the petition schedule item No.2 property from the JDR No.1 through registered sale deed dated: 13-12-2006 for valuable consideration of Rs.7,000/-. He is the poor agriculturist and the DHR in collusion with another one filed suit in O.S.No.94/2006 before this court and obtained ex parte decree. As per the said decree the DHR filed this execution petition before this court. On the basis of registered sale deed dated:13-12-2006 he became the absolute owner and possessor of the petition schedule item No.1 property even to to this day. The DHR obtained decree on 19-04-2007. Before passing of decree he is the owner and possessor of the suit schedule property. This fact is very much within the knowledge of the decree holder. At that time the decree holder has not impleaded him as a party to the suit. On the last week the court officials came to the petition schedule item No.1 property and informed him about the order of delivery of possession of the said property by this court. He

came with this application for seeking to set aside the order of delivery of possession dated: 03-04-2013. Since the date of sale deed he has been peaceful possession and enjoyment of the said land. Prior to the sale deed her vendor was in possession of the said land. The DHR and JDR No.1 are colluded with each other and got obtained exparte decree dated: 19-04-2007 in O.S.No.94/2006. He has not party to the sale to the suit. The said decree is not binding on his rights. The DHR has un-necessarily caused obstruction and interference in the peaceful possession and enjoyment of the petition schedule land. The DHR is illegally trying to trespass in to the petition schedule land and causing illegal interference and obstrcuction. He resisted the illegal act of the DHR. He is the absolute owner and possessor of the petition schedule item No.1 property. His livelyhood is based on the income of the said land and there is a lawful liability partening to the said land. If the said land is attached he will be put great hardship and injury. Therefore, it is prayed to allow the petition.

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5. Having heard decree holder and counsel for JDr No.1 and 2.
6. Perused the records in detail.
7. On the basis of the above pleadings, the following points have formulated:

1. Whether the decree holder has shown sufficient and reasonable grounds for executing the decree passed in O.S.No.79/2004 dated 11.7.2005?

2. What order?

8. My findings on the above points are as follows:

Point No. 1: In the affirmative.

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

**:: R E A S O N S ::**

**9. Point No.1:** The decree holder filed this execution petition U/21 R.11 of CPC against the JDrs.No.1 and 2 in respect of decree schedule properties on the strength of decree passed in O.S.No.79/2004 dated 11.7.2005. The decree holder had filed suit in O.S.No.79/2004 against the present JDrs in respect of petition schedule properties for declaration and mandatory injunction. The said suit came to be decreed on 11.7.2005. As per the said decree, the JDr No.1 and 2 have to remove the already constructed house from the suit schedule properties and they have to pay the cost of the suit. But the JDr No.1 and 2 did not obey the said decree of the court. Hence this execution proceedings has been initiated against the JDr No.1 and 2. The JDr No.1 filed objection to the petition inter-alia contending that the decree holder has not stated the true facts before the court and several suits pending in respect of petition schedule properties before this court. Therefore decree holder is not entitled to execute the decree passed in O.S.No.79/2004.

The JDr No.2 filed objection to the objection filed by JDr.No.1 to the main petition. The JDr No.2 has indirectly admitted the claim of the Decree holder.

10. Upon considering the rival contention of the parties and after perusal of the records in detail. In order to prove the case of the decree holder, the decree holder has got produced the certified copy of decree passed in O.S.No.79/2004 dated 11.7.2005. A perusal of the same, it reveals that the decree holder had filed suit in O.S.No.79/2004 against the present JDrs in respect of petition schedule properties. The said suit was came to be decreed on 11.7.2005. As per the said decree the JDr No.1 and 2 have to remove the constructed house in the petition schedule properties and also to pay the cost of the suit. But the JDr No.1 and 2 have not obeyed the said decree passed by this court. The JDrs No.1 and 2 have not removed the illegally constructed house in the petition schedule properties till today. The Jdrs No.1 and 2 have to obey the decree of the court. During the pendency of the execution proceedings, the JDr No.1 had filed application U/o 21 R.29 for seeking to stay the proceedings of this execution petition. The decree holder filed objection to the said petition. After hearing the matter the said application was allowed by this court and stayed the execution proceedings till disposal of the O.S.No.96/2008 and O.S.No.122/2011. Aggrieved by the

said order the decree holder had preferred writ petition No.44600/12 dated 11/03/2014. The Hon'ble High Court of Karnataka allowed the writ petition and set aside the order passed by this court on application U/o.21 R.29 dated 3.9.2012 and directed this court to execute the decree without prejudice of the third party rights. In view of the order of the Hon'ble High Court of Karnataka passed in W.P.No.44600/12 dated 11.3.2014, this court has no option to execute the decree passed in O.S.No.79/2004. This court has considered the grievances of the JDr No.1. The JDr No.1 has got produced six documents. But the said documents are not helpful to the case of the JDr.No.1. The said documents cannot disprove the claim of the Decree holder. The JDr No.2 admitted the claim of the decree holder and indirectly stated that to allow the execution proceedings. The decree holder has not enjoyed the fruits of the decree since 11.7.2005. Therefore it is incumbent on part of this court to execute the decree passed in O.S.No.79/2004 against the Jdr.No.1 and 2. The JDrs No.1 and 2 have no option to obey the decree passed in O.S.No.79/2004. The JDrs have not preferred any appeal against the Judgment and decree passed in O.S.No.79/2004. In this regard, no document placed before the court by the JDrs. Hence, I am of the opinion that the decree holder has shown reasonable and good grounds for executing the decree passed in O.S.No.79/2004 against the JDrs No.1 and 2. **Hence I**

**answer point No.1 in the affirmative.**

11. **Point No.2:** In view of the above findings, I proceed to pass the following.

**:: O R D E R ::**

***The execution petition U/o 21 R.11 of CPC filed by the decree holder is hereby allowed.***

***The JDrs No.1 and 2 are hereby directed to remove the constructed house in the petition schedule properties and also directed to pay the cost of the suit.***

***The JDrs No.1 and 2 and any person claiming on their behalf or represents are hereby directed not to obstruct in execution of decree.***

***Issue warrant through court bailiff for removing the constructed house by the JDrs in the petition schedule properties.***

***The decree holder has to bear the costs.***

(Dictated to the stenographer directly on computer, corrected and signed by me and then pronounced in the open court on the 29<sup>th</sup> day of OCTOBER - 2015)

**(PRAKASH ARJUN BANASODE)  
Civil Judge, Harapanahalli.**

**12.3.2015**

Decree holder by – Inperson

JDr-1 by: Sri THMV

JDr-2: by: Sri HCV

For order

(Order pronounced in the open court vide separate order)

**:: ORDER ::**

The execution petition U/o 21 R.11 of CPC filed by the decree holder is hereby allowed.

The JDrs No.1 and 2 are hereby directed to remove the constructed house in the petition schedule properties and also directed to pay the cost of the suit.

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Issue warrant through court bailiff for removing the constructed house by the JDrs in the petition schedule properties.

The decree holder has to bear the costs.

**Civil Judge, Harapanahalli.**