

MHAU060000622004



ORDER BELOW EXH.134,136,148 and 151 IN R.D. NO. 10/2004
(Vithabai Bhojane Vs. Goba Pawar and others)

The present objection is filed by the J.D. no. 1.1 and 1.2. against the D.H. as per Section 47 of the Civil Procedure Code to lead oral as well as documentary evidence.

2. The ld. Advocate for the J.D. argued that the J.D. no. 1 died and the objection petitioner are the legal heirs and successor of the J.D. no.1. In view of the provisions of Section 47, all questions arising between the parties to the suit in which the decree was passed for their representatives and relating to execution of the decree shall be determined by the court executing decree and not by separate suit. The ld. advocate for the J.D. further argued that the decree holder claims the suit property Gut number 126 admeasuring 21 acres 17 Gunthas, situated at village Sitanaik Tanda, Taluka: kannad having boundaries towards East: land of Sahebrao Bhavurao and Kishen Ramachandra, West: land of Vithabai Shankar and Mandabai Isram Salunke South: Nala and the land of Kacharu Punjaba. North: River. Decree holder claims above boundaries where not at all mentioned in the plaint itself. In the said execution vide Exh.86 the court has passed the order and appointed the court commissioner for identification of the suit property. Ld.advocate for the J.D. further argued that the decree holder have submitted an affidavit on 18 April 2011 in civil application number 15843/2010 in second appeal

spam No. 33939 of 2010 and by the said affidavit decree holder admitted in the para no.3 of the affidavit that the suit property is ancestral property of Visaram Parashram Salunke who was the original owner of the suit property and the said property came under possession of his wives namely Radhabai and Mandabai bearing old survey number 156 (Gut no 429) newly gut no.129, situated at village Kolwadi and due to bifurcation the said survey number came under the village Sitanaik Tanda, therefore they have given the new gut number as gut no.129 admeasuring 12 acres 20 gunthas. Further it is admitted that has been sold by Radhabai and Mandabai in favour of judgement debtor number one and two by way of registered sale deed. Further in para no.6 of the said affidavit it is admitted that the J.D. No.1 and 2 have purchased the survey number 156 new gut number 129. The J.D. No.1 and 2 claims the property through their predecessor survey number 156/2 admeasuring 12 acres 20 Gunthas having boundaries, East: land Ramachandra Seva and nala, West: Land survey number 148/1 South: Land of Eknath Punjaba and North: River and Land of Mangu Baghu. The copy of the sale deed is already placed on record. The J.D. No.1 and 2 submitted that the above referred position clearly goes to show that the decree holder as well as the J.D. No.1 and 2 claims different properties. Admittedly the land survey number 156/2 admeasuring 12 Acres 20 gunthas was sold by Radhabai and Mandabai that is mother of the decree holder and stepmother through registered sale deed dated 25th April 1966 and the said property is purchased by the J.D. No.1 and 2 through registered sale deed dated 16th February 1984. The boundaries shown in the measurement map and the report Exhibit 85 do not tally with the

boundaries mentioned in execution petition. The J.D. further submitted that the land to the extent of 40 R was sold by Goba Lalchand Pawar through registered sale deed number 3483 on 4.7.2001 in favour of Madhao Dagadu Solunke having boundaries East: land of Gaba Uma, West: remaining land, south: land of Jagan Ganesh , North: land of Santram Govinda. The J.D. no.1.1 purchased above referred land from Madhao Dagadu through registered sale deed number 3182 dated 29.5.2004 and the mutation entry came to be recorded in ownership as well as cultivation column and the judgment debtor is in actual possession of the said portion of land.

3. The JD further argued that the J.D. no.1.1 was not party to the suit or appeal proceedings and he claims the above referred property. Since he was not party and he is now added as legal heirs of J.D. no.1 in the execution petition against J.D. no.1.1 is not at all maintainable. Even the decree holder in the entire execution petition has not specifically stated role of the present J.D. no.1.1. The J.D. no.1.2 is the legal heir and successor of the J.D. no.1. There are also other legal heirs and successor to the J.D. no.1, The said persons are not made parties to the execution petition. Similarly the other persons that is Jagan Rathod, Shantaram Govinda have purchased the land Gut no:129 and their names are also appearing in the 7/12 extract the said persons are also not made parties to the execution petition and even in one they where not parties to the suit also. Hence they be permitted to lead oral as well as documentary evidence in support of objection raised under Section 47 of CPC.

4. The decree holder has filed his say and stated that on 25.09.2013 court commissioner was appointed and the court commissioner has filed his report on 06.01.2014. The court commissioner has given the detail of the adjoining land holders of gut no.126 in detail. According to the report the Honble Court has already issued the possession warrant. But the J.D. has obstructed for the execution of the possession warrant. The Id. Advocate for the D.H. further argued that there is no need of adducing oral and documentary evidence in said execution . Present application is filled only to prolong present matter. Hence Id. Advocate for the D.H. prayed to issuance of possession warrant with police protection.

5. Perused the record. Heard both parties. Present execution is filed in the year 2004 . Admittedly the boundaries of the suit properties were not mention in the plaint. The decree in present proceeding is confirmed up to Honble Supreme Court. The decree holder had filed an application below Exh.37 for appointment of court commissioner and accordingly the court commissioner has filed the report below Exh. 65 and 85. Admittedly in objections under Section 47 of Civil Procedure Code all questions arising between the parties to the suit relating to the execution, discharge or satisfaction of the decree can be determined by the court executing the decree.

6. The Id. adv for the J.D. argued that the land survey no. 156/2 admeasuring 12 Acres 20 gunthas was sold by Radhubai and Mandabai that is mother of the decree holder and stepmother through registered sale deed dated 25th April 1966 and the said property is purchased by the J.D. No.1 and 2 through registered sale deed dated 16th February

1984. The boundaries shown in the measurement map and the report Exhibit 85 do not tally with the boundaries mentioned in execution petition. The J.D. further submitted that land to the extent of 40 R was sold by Goba Lalchand pawar through registered sale deed number 3483 on 4.7.2001 in favour of Madhav Dagadu Solunke having boundaries East: land of Gaba Uma, West: remaining land, south: land of Jagan Ganesh , North: land of Santram Govinda. The J.D. no.1.1 purchased above referred land from Madhav Dagadu through registered sale deed number 3182 dated 29.5.2004 and the mutation entry came to be recorded in ownership as well as cultivation column and the judgment debtor is in actual possession of the said portion of land. It is an admitted legal position that an executing court can not go behind the decree until and unless the decree is nullity. However in terms of Section 47 of Code of Civil Procedure the executing court is required to look in to the questions relating to execution, discharge or satisfaction of the decree. Such questions are to be adjudicated by the executing court and not by a separate suit. Perused the record it shows that the above mentioned all questions are previously decided by the Honble, Higher court. In present matter already possession warrant is issued. The decree in present suit is confirmed up to Honble Supreme Court. The court commissioner report is filed at Exh.65 and 85 and it is sufficient to identify the boundaries. The matter is old in nature. Therefore , possession warrant is required to be reissued. The D.H. has filed application vide Exh.134 requesting for police aid for execution of possession warrant. Perused the record it shows that on 19.05.2022 the court bailiff went to the suit property to take possession. The bailiff has submitted his report on court record and

stated that there may be obstruction to the execution. Therefore to take possession of the suit property it is just and necessary for the D.H. to avail police aid. The D.H. has filed an application requesting for police aid for execution of possession warrant. I have perused bailiff report dated 24.08.2018 which demonstrate that, J.D. have obstructed the bailiff work. Accordingly, the bailiff has also prayed for police aid for execution of possession warrant. Hence, I pass the following order.

ORDER

- 1] Application vide Exh.134 is stands allowed.
- 2] Application vide Exh.136,148 and 151 are stands rejected.
- 3] Police aid be provided to the D.H. on payment of necessary police bhatta

Place : Kannad.
Date : 20.05.2023.

(Smt. A. I. Awati)
Jt. Civil Judge, Junior Division
(Court no. 2) Kannad.

C E R T I F I C A T E

I affirm that the contents of this PDF file judgment/order are same word to word as per the judgment/order.

Name of Court	:-	Smt. A. I. Awati Jt. Civil Judge Junior Division & J.M.F.C, Kannad.
Name of Stenographer	:-	--
Name of Typist	:-	L. B. Aade (Jr. Clerk)
Date of Decision	:-	20.05.2023
Order Signed by the Presiding Officer on	:-	20.05.2023
Order Uploaded on	:-	20.05.2023
Order is Digitally Signed on	:-	20.05.2023
