

KABR020000572010



IN THE COURT OF PRL.SENIOR CIVIL JUDGE,
AT BENGALURU RURAL DISTRICT, BENGALURU,

PRESENT:

SRI. ABDUL SALEEM. B.A.(LAW), LL.B.
Prl. Senior Civil Judge, Bengaluru Rural District,
Bengaluru.

Ex.No.65/2010

Dated this the 12th day of June, 2025

DECREE-HOLDERS:

- Sri N.H.Shivamurtht,
Since deceased by his Lrs.
1. Smt. S. Shashikala,
W/o late N.H. Shivamurthy,
Aged about 52 years,
R/at No.56, 3rd Main,
Teacher's Colony,
Nagarabhavi Circle,
Bangalore – 560 072.
 2. Kum. S. Deepthi Murthy,
D/o late N.H. Shivamurthy,
Aged about 22 years,
R/at No.56, 3rd Main,
Teacher's Colony,
Nagarabhavi Circle,
Bangalore – 560 072.

(By.Sri B.K.S. - Advocate)

// Verses//

JUDGMENT DEBTORS: Sri Mark Gomez,
S/o Janavar Gomez,
Aged about 50 years,
R/at TC-11/2735,
A(4) Apartment,
Housing Board Colony,
Pattom, PO,
Thiruvananthapuram,
Kerala State
And also residing at:
“Sree Krishna Bhavan”,
North Kazha Kuttom – PO,
Trivandram District,
Kerala State – 695 582.

GPA Holder of:

1. Smt. Ursila, W/o late Twunnyson Fernandez;
2. Sri Marcose, S/o late Twunnyson Fernandez;
3. Sri John Jeffry, S/o late Twunnyson Fernandez;
4. Sri Kenny, S/o late Twunnyson Fernandez.

**(By Sri K.B. – Adv. for JDR,
Sri B.K.S. –Adv.for Objr.)**

PARTIES IN IA.No.VI

Applicant/Objector: Mr. N.H. Rustumji

Vs

Opponents/DHRs: Sri Shivamurthy -since dead by Lrs
& Others

Provision under which the application is filed : Under Order 1 Rule 10(2) read with Order 21 Rule 97 read with Section 151 of CPC.

Relief sought for : to implead the N.H. Rautumji as Objector.

The application filed on : 27.06.2019

Number of application : 01

The objection filed on : 01.03.2021

The date of order passed on : 12.06.2025

O R D E R O N I A N o . V I F I L E D B Y T H E O B J E C T O R N A M E L Y
S R I . N . H R U S T U M J I U N D E R O R D E R I R U L E 1 0 (2) R / W
O R D E R 2 1 R U L E 9 7 R / W 1 5 1 O F C P C .

The present petition is filed by the Objector to implead him in the present petition as objector.

2. It is submitted by the Objector that the Objector has purchased the petition schedule property under two registered sale deed both dated 23.02.2005 from late Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson. Based on the said sale deeds, the Objector got obtained the Katha pertaining to the petition schedule property. When that being so, One Mr. Gaffar Baig

filed the suit in O.S No. 722/2011 for declaration in respect of the petition schedule property, among the others the Objector, DHR, and JDR . During the course of the said suit, the Objector came to know about the fraud played by the DHR by creating the document styled as agreement of sale dated 14.11.2006 executed by JDR based on the fabricated General power of Attorney purportedly executed by late Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson, which GPA was disowned by the late Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson in the suit filed in O.S No. 506/1999 on the file of Ist Addl. Munsiff Court Thiruvanthapuram.

3. It is further submitted by the Objector that in order to make unlawful claim over the petition schedule property, the DHR, based on the fabricated Power of Attorney purported to be executed by late Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson in favour of the JDR, entered into the agreement of sale dated 14.11.2006 with the JDR for the total sale consideration of Rs 58,70,000/-. Thereafter the DHR has filed the suit in O.S. No. 674/2008 for enforcement of the agreement of sale dated 14.11.2006. Thereafter, The DHR and JDR colluding with each other entered into compromise as per the compromise petition dated

04.01.2010 wherein which the JDR agreed to execute the sale deed in respect of the petition schedule property in favour of the DHR. In the suit in O.S No. 674/2008 the DHR had not made late Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson as parties.

4. It is further submitted by the Objector that the Objector has filed the suit in O.S. No. 535/2017 against the decree passed in O.S. No. 674/2008. That DHR and JDR colluding with each obtained illegal decree in the suit in O.S. No. 674/2008 and based on the same the DHR laid unlawful claim over the the petition schedule property. That, Since the Objector is the absolute owner of the petition schedule property by virtue of the registered sale deeds dated dated 23.02.2005. Therefore the Objector may be impleaded as party in the petition. Hence sought for allow the present application.

5. The present Execution petition is filed by the Lrs of the original DHR, after demise of the Original DHR. The Lrs of DHR have filed objection to the present application and denied entire case of the Objector. It is denied that Objector is the absolute owner of the petition schedule property by virtue of the sale deeds dated 23.02.2005. It is contended by the Lrs of DHR that the present application is filed by the DHR only to knock of the petition schedule property.

6. It is further contended by the DHR that the originally petition schedule property belonged to Mrs. M.H. Yaull D/o Mr. M.W. Yaull. Mrs. M.H yaull , to meet her legal necessity sold the same to Ms. Mary Fernandez under the registered sale deed dated 16.10.1959. On advent of the Inam Abolition Act, petition schedule property was vested with the Government and thereafter Mrs M.H. Yaull filed the application under section 5 of the Inam Abolition Act and same is number as Case No. 95/1959-60 before the Special Deputy Commissioner for Abolition of Inam. The Special Deputy Commissioner for Abolition of Inam rejected the application filed by the Mrs M.H. Yaull reasoning that she had already sold the petition schedule property. As against order of rejection, she preferred an appeal before the Mysore Revenue Appellate Tribunal in appeal No. 2269/1965. said appeal was allowed and the matter was remanded to the Special Deputy Commissioner for Inam Abolition to decide the matter afresh. In the inquiry conducted by the Special Deputy Commissioner for Inam Abolition, Mrs M.H. Yaull submitted no objection to register Ms. Mary Fernadez as Permanent tenant in respect of the petition schedule property and Accordingly Ms.Mary Fernandez has been registered as Tenant in respect of the petition schedule property.

7. It is further contended by the Lrs of DHR that, Ms Mary Fernandez died intestate on 16.01.1971 leaving behind her nephew namely Mr. Tennyson M. Fernandez, who was her adopted son. That, Mr. Tennyson M. Fernandez had obtained succession certificate in respect of the all assets left behind by Ms. Mary Fernandez in the O.P. No. 120/1973 before the II Additional Sub -Judge, Thiruvanthapuram, Kerala and being the adopted son of Ms. Mary Fernandez, Mr. Tennyson M. Fernandez inherited the petition schedule property. After demise of Mr. Tennyson.M.Fernandez, his wife and children namely late Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson succeed to the petition schedule property.

8. It is further contended by the Lrs of DHR that late Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson were unable to look after the petition schedule property as such they have appointed the JDR- Mr. Gomes as their attorney to look after the affairs of the petition schedule property as per the GPA dated 10.06.1998.

9. It is further contended by the Lrs of DHR that, late Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson have filed RA No. 42/2001-02 before the Assistant Commissioner, Bangalore North Taluk

to transfer the katha pertaining to the petition schedule property and same came to be allowed on 26.02.2002 and said order was confirmed by the Deputy Commissioner in Revision Petition No. 156/201-02 and by Hon'ble High court of Karnataka in W.P. No. 10187/2006.

10. It is further contended by the Lrs of DHR that, as attorney of the late Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson, the JDR- Mr. Gomes, has entered into agreement of sale dated 22.03.2004 and 14.11.2006 with the DHR to sell the petition schedule property. However on default of JDR to fulfill the obligation under the agreement of sale, the DHR filed the suit in O.S. No. 674/2008. Thereafter the suit in O.S.No. 674/2008 has been decreed based on the compromise entered in between the DHR and JDR wherein which the JDR agreed to execute the sale deed. However the JDR failed to oblige the compromise decree compelling the Lrs of DHR to initiate present execution proceeding as the Original DHR died in the meantime.

11. It is further contended by the Lrs of DHR that, One MR. Gaffar Baig filed the suit in O.S No. 722/2011 for declaration of title in respect of the petition schedule property and to declare that the decree passed in O.S. No. 678/2008 is null and void and not binding on the plaintiff therein namely Mr. Gaffar Baig.

In which the Objector herein was also one of the parties. therefore the Objector had knowledge of the suit in O.S.No. 678/2008 in the year 2011 itself but the present petition is filed after lapse of 08 years as such the present petition is bared by law of limitation.

12. It is further contended by the Lrs of DHR that in the suit filed by Divine Light Trust seeking permanent injunction against the Objector herein in respect of the petition schedule property, it was held in the said judgment that sale deed of the Objector is hit by Lis-Pendence. That, the appeal filed by the Objector against said judgment was came to be dismissed for default on 17.11.2015. Therefore the finding in the said judgment and decree is binding on the Objector.

13. It is further contended by the Lrs of DHR that, there was some deference arose between Mrs. Urcilla Tennyson and her son Mr. Kenny Tennyson leading to file complaint before the Additional Chief judicial Magistrate At Trivandrum in CMP No. 2221/1999 and same was investigated by the Police and thereafter closure B report was filed. And said aspect of fact was admitted by the Mr. Markose Tennyson in the evidence in O.S No. 722/2011 despite said admission as to GPA executed in favour of JDR as genuine document, the Objector, after lapse

of 20 years came up with the objection as to the said GPA is fabricated.

14. It is further contended by the Lrs of DHRs that the transaction/sale deed dated 23.02.2005 relied by the Objector was subjected to the investigation by the Commissioner of Police CAR Bangalore in an inquiry initiated by Hon'ble High Court of Karnataka in WP No. 22743/2005(GM-PIL). In the said inquiry it was found that within a month of purchasing the petition schedule property by the Objector the petition schedule property was mortgaged to Confirming Party namely Mr. Rajendran for 4 times of the purchase value. Therefore the transaction/sale deeds dated 23.02.2005 are done with the ulterior motive. Therefore the claim of the Objector in respect of the petition schedule property is not lawful.

15. It is further contended by the Lrs of DHR that the Objector is in habit of knocking of valuable property by fabricating the documents and the present application is filed by the Objector only to deny the right of the Lrs of DHR in the petition schedule property. Hence they sought for reject the application with the heavy cost.

16. The both, Objector and the Lrs of DHR have lead their evidence. In order to prove the case of the Objector, The Objector himself entered into witness box and examined as OW1 and got produced 23 documents as Ex.P1 to 23. On the other hand Mrs S.Shahikala, the wife of original DHR, has been examined as RW1 and got marked Ex.D1 to 13(a).

17. Heard the arguments of the counsels for the Objector and Lrs of DHR and they have also filed the written arguments.

18. The learned counsels for Objector relied on following decisions :-

(1)(2019) 2SCC 727 in the case Jamila Bagum V Shami Mohd.

((2) AIR 1997 SC 1333 in the case of Sher Sing V Gamdoor Singh .

(3) Air 2000 SC 3272 Grama Panchayath Village Naulakia V Ujagar Sing

(4) Air 1996 Sc 2050 in the case of Babu Lal V Raj Kumar.

19. On the other hand Learned Counsel for the Lrs of Dhr has relied on following decisions:-

(1) 2023 INSC 958(reportable) in the case of Pradeep Mehara v Harijivan J jewthaand others.

- (2) AIR 2001 SC 2552 in the case of Shurandhar Prasad Sing V Jai Prakash Unniversity and others
- (3) Civil Appeal No. 3616/2024 in the case of Raju Naidu V Chenmouga and co.
- (4) 2020 SC 629 in the case of Trilok Nath V Anirudh Sing and other.
- (5) 2021(6) SCC 418 in the case of Rahul S Shad V jenedra Kumar Gandhi and otehrs.

20. It is argued by the learned counsel for the Objector that the petition schedule property was owned by late Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson, however the JDR caliming to be the GPA holder of late Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson, executed sale agreement dated 22.03.2004 and 14.11.2006 in favour of DHR and based on the same, suit for specific performance of contract was filed by the DHR but owner of the petition schedule property were not made as parties and no relief was sought against the owners of the petition schedule property. Therefore the decree passed in the said suit is nullity.

21. It is further argued by learned counsel for Objector that as could be seen from the agreement of sale, the entire alleged payment was made in favour of the JDR. Therefore the alleged

transaction is between the DHR and JDR but not with the owners of the petition schedule property. Therefore the said transaction is bad in law.

22. It is further argued by the learned Counsel for the Objector that the Objector is the absolute owner of the petition schedule property as per sale deeds dated 23.02.2005 executed by late Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson. And said sale deeds has not been disputed by the executant namely late Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson. Therefore in view of the presumption as to sale deed is valid unless it is established to be invalid as has been held in the decision reported in (2019) 2 SCC 727, the sale deed of the Objectors is required to be presumed good in law.

23. It is further argued by the learned counsel for the Objector that sale deeds of the Objector are prior in time and the Objector is not the party in the suit in O.S.No 674/2008. Therefore, the decree passed in the O.S. No. 674/2008 is not binding on the Objector as has been held in the decision reported in AIR 1997 SC133 and AIR 1996 SC 2050. Therefore the decree passed in O.S. No. 674/2008 is nullity.

24. It is further argued by the learned counsel for the Objector that the decree passed in O.S No. 415/1997 does not operate as Res- Judicata in respect of the title of the Objector in so far as the petition schedule property is concerned as the said suit was filed by the Divine Light Trust for permanent Injunction, as has been held in the decision SIR 200 SC 3272.. Thus he sought for allow the Application.

25. On the other hand learned counsel for Lrs of DHR argued that the Objector rely on the sale deeds both dated 23.02.2005 to claim right over the petition schedule property but in view of the inquiry conducted by Sri. B.N.S. Reddy, Joint Commissioner of Police CAR, Bangalore City, in pursuant to the direction of the Hon'ble High Court of Karnatak in WP.No. 22473/2005(GM-PIL), it was found that the transactions/sale deeds dated 23.02.2005 were not in order but done with the ulterior motive. Further it is argued by the learned counsel for the Lrs of DHR that in the decree passed in O.S.No. 415/1997 which was filed by the Divine Light Trust against the Objector and in O.S No. 1538/2005, in which the Objector was defendant No.6, the title deeds of the Objector in respect of the petition schedule property is held to be hit by the Lispendency and defective title. Therefore the title deed relied by the Objectors is defective title. It is argued by the learned counsel for the Lrs of DHR that the alleged transactions

between the Objector and the Sri. Rajendran hints the foul play and ulterior motive to grab the petition schedule property. Therefore the title of the Objector is not lawful title.

26. It is further argued by the learned counsel for Lrs of DHR that the DHR, having obtained the decree in O.S.No. 674/2008 based on the agreement of sale dated 22.03.2004 and 14.11.2006 executed by original owners of the petition schedule property namely late Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson through their GPA holder JDR, has initiated the present petition to obtain the sale deed through the process of law. Therefore the this court is required to take logical end to the decree by enforcing the same and in execution petition the executing court can not go behind the decree as has been held in the decisions in 2023INS958 and AIR 2001 SC 2552. Therefore the right of the Lrs of the DHR can not be permitted to be defeated by the Objector. Hence sought for rejection of Application.

27. On the basis of the contentions of the both parties and the documents produced before the court, the the following points arise for consideration of the court :

POINTS

1. Whether the Objector has established lawful right over the petition schedule property to claim right over the petition schedule property?

3. What Order or Decree ?

28. My answer to the above points are as follows :-

Point No.1 :- In the '**Negative.**'

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

REASONS

29. **Point No.1:-** The instant application is filed by the Objector claiming right over the petition schedule property stating that he is the absolute owner of the petition schedule property by virtue of the registered sale deeds both dated 23.02.2005. In order prove that the Objector has got right over the petition schedule property, he has entered into witness box and examined as PW1 and PW1 in his chief examination affidavit reiterated application averment. As documentary evidence, The Objector has relied 23 documents and same have been marked as Ex.P1 to 23. Here, it is proper to make note of the documentary evidence relied by the Objector.

30. Ex.P1 and 1(a) are certified copy/original sale deed bearing document No.33618/2004-05. It goes to show that Mr. Markose Tennyson, Mr. Kenny Tennyson represented by their general power of attorney holder Sri K. Rajendran as per the general power of attorney dated 26.02.2004 and as a first party and K. Rajendran as a confirming party have executed the registered sale deed in respect of their $\frac{1}{2}$ undivided share in the petition schedule property i.e., land bearing Sy.No.33(old Sy.No.5/4) measuring 4 acres 31 guntas together with 18 guntas of karab land situated at Pattandur Agrahara Village in favour of The Objector-Sri N.H.Rustumki.

31. Ex.P2 and 2(a) are certified copy/original sale deed bearing document No.33619/2004-05, dated 23.02.2005. It discloses that Mrs.Urcila Tennyson, Mr. John Jeffry Tennyson jointly as vendors and Sri K. Rajendran as confirming party, executed the registered sale deed alienating the remaining $\frac{1}{2}$ undivided share in the petition schedule property in favour of Objector-N.H.Rustumji.

32. Ex.P3 is certified copy of property tax register extract. It reflects the name of Objector – N.H. Rustumji as owner of the petition schedule property.

33. Ex.P4 and 5 are counter affidavit and deposition of Mr. John Jeffry and arkose Tennyson in the suit in O.S.No.506/1999 and Suit in O.S No. 722/2011.

34. Ex.P6 is certified copy of the plaint in O.S.No.674/2008. It sows that the DHR herein field suit against the JDR-Mr. Mark Gomez as power of attorney holders of Smt. Ursila, Sri Marcose, Sri John Jeffry and Sri Keny for specific performance of contract dated 14.11.2006 and registered agreement dated 22.03.2004 in respect of the petition schedule proeprty.

35. Ex.P7 is certified copy of the memorandum of settlement filed by DHR and JDR in the suit in O.S. No. 674/2008. Wherein which it discloses that the JDR has has agreed to execute the sale deed in respect of the petition schedule property in favour of DHR within a month since then by receiving full and final settlement amount of Rs 1,30,000/- in addition to the sale consideration of Rs 58,70,000/- fixed under the agreement sale deed 14.11.2006 and 22.03.2004.

36. Ex.P8 is form No.15 disclosing the transaction took place in respect of the Petition schedule property .

37. Ex.P9 is certified copy of the order sheet in O.S.No.674/2008.

38. Ex.P13 is a plaint in O.S.No.722/2011. It discloses that one Mr. Gaffar Baig filed suit against the defendants namely M/s. Divine Light School for blind along with other defendants including the JDR, Sri K. Rajendran and Smt. Urcila Tennyson, Sri Markose Tennyson and Sri John Jeffery Tennyson in respect of petition schedule property praying for relief of declaration that Mr. Gaffar Baig is the absolute owner of petition schedule property herein by virtue of registered sale deed dated 07.01.2011 and to declare that the sale deed dated 23.02.2005 executed by K. Rajendran, sale deed dated 23.02.2005 executed by Sri Markose Tennyson and Kenny Tennyson in favour of Objector and to declare the judgment passed in 1528/2005, O.S.No.674/2008, O.S.No.250/2011 and the sale agreement dated 05.07.2009 are not binding on the -Mr. Gaffar Baig- the plaintiff therein.

39. Ex.P10 and 15 are written statements filed by defendants No.9, 10 and evidence of defendant No.5 respectively in O.S.No.722/2011.

40. Ex.P11 is a plaint in O.S.No.25950/2010 filed by N.H. Krishnamurthy against original DHR along with Smt. Shashikala and Smt. Deepthi, Smt. Parvathi in respect of certain properties including the petition schedule property

property seeking the relief of the relief of declaration that the Will dated 08.04.2010 is binding on the defendants therein and for permanent injunction.

41. Ex.P12 is written statement filed by the defendants No.1 & 2 in O.S.No.25950/2010.

42. Ex.P14 written statement filed by the defendant No.3 therein, JDR herein in suit in O.S.No.535/2017 filed by the Objector herein in respect of the petition schedule property to declare that the judgment and decree passed in O.S.No. 674/2008 is null and void.

43. Ex.P15 is evidence affidavith of Mr. Markose Tennyson filed in O.S No. 722/2011.

44. Ex.P16 is Registered agreement of sale dated 26.02.2004. It shows that said agreement is entered in between Mr. Kenny Tennison with Mr. Rajendran in respect of the 1/4th share of the Mr. Kenny Tennyson over the petition schedule property.

45. Ex.P17 is Registered agreement of sale dated 26.02.2004. It shows that said agreement is entered in between Mr. Markose Tennyson with Mr. Rajendran in respect of the 1/4th

share of the Mr.Markose Tennyson over the petition schedule property.

46. Ex.P18 is Registered General Power of Attorney dated 26.02.2004. It shows that Mr. Kenny Tennyson authorized Mr. Rajendran to deal with 1/4th share of the Mr. Kenny Tennyson in the petition schedule property.

47. Ex.P19 is Registered General Power of Attorney dated 26.02.2004. It shows that Mr. Markose Tennyson authorized Mr. Rajendra to deal with the 1/4th share of the Mr. Markose Tennyson in the petition schedule property.

48. Ex.P20 is Registered General Power of Attorney dated 18.10.2001. It shows that Mrs. Urcila Tennyson authorized Mr. John Jeffry Tennyson to deal with the the petition schedule property.

49. Ex.P21 is confirmation letter dated 18.02.2005 confirming that Mrs. Urcila Tennyson authorized Mr. John Jeffry Tennyson as GPA holder to deal with the petition schedule property as per Ex.P20 GPA.

50. Ex.P 22 is judgment dated 22.09.2015 passed in O.S. No. 722/2011. It reveals that the suit filed by Mr. Gaffar Baig

against the defendants namely M/s. Divine Light School for blind along with other defendants including the JDR, Sri K. Rajendran and Smt. Urcila Tennyson, Sri Markose Tennyson and Sri John Jeffery Tennyson in respect of petition schedule property praying for relief of declaration that Mr. Gaffar Baig is the absolute owner of petition schedule property herein by virtue of registered sale deed dated 01.01.2011, has been decreed and it is declared that Mr. Gaffar Baig is the absolute property absolute owner of petition schedule property herein by virtue of registered sale deed dated 01.01.2011 and the sale deed dated 23.02.2005 executed by K. Rajendran, sale deed dated 23.02.2005 executed by Sri Markose Tennyson and Kenny Tennyson in favour of Objector and the judgment passed in 1528/2005, in O.S.No.674/2008, and in O.S.No.250/2011 and the sale agreement dated 05.07.2009 are not binding on the -Mr. Gaffar Baig- the plaintiff therein.

51. Ex.P23 is order passed by Hon'ble High court of Karnatak, on I.A No.I and II /2012, in WP No. 22743 of 2005 observing that petition schedule property is in the possession of The Divine Light School for Blind.

52. Converse to the claim of the Objector the Lrs of DHR have adduced their evidence to refute the case of the Objector and in

that process, Mrs S.Shashikala the wife of Original DHR has entered into witness box and filed her chief examination affidavit and examined as RW1 and reiterated contentions taken in the objection filed by the Lrs of DHR to the present Application . As documentary evidence , RW1 has relied on 13 documents and same have been marked as Ex.D1 to 113(a). To make note of the documentary evidence relied by the Lrs of DHR are.

53. Ex.D1 certified copy of Order dated 14.07.2011 passed by Hon'ble High Court of Karnataka in WP No. 22743/2005 wherein which Mr. B.N.S. Reddy, Joint Commissioner of Police, CAR, Bangalore City has been appointed to investigate into the ownership right in respect of the petition schedule property and to submit report.

54. Ex.D3 is certified copy order dated 06.02.2013 passed by Hon'ble High court of Karnataka in WP No. 22743/2005(GM-RES-PL). It shows that one of the Students of Blind School filed the petition seeking to quashing of the sale deeds pertaining to the petition schedule property herein and the Hon'ble High court Karnataka, by allowing the parties to workout their remedies before the Civil court appointed Mr. D.N. Nanjunda Reddy, Senior Advocate to supervise the

management and activities of the school as well as the civil litigation filed by and against the Blind School.

55. Ex.D-4 is certified copy of the judgment dated 23.11.2009 passed in O.S.No. 415/1997. It indicates that M/s Divine Light School for Blind filed the suit against Mr. Huskun Teleson, Mr. Marcose Teleson, Mr. Jon Jepre Teleson, Mr. Netelson and Mr. N.H. Rusthumji, the Objector herein for permanent injunction in respect of the petition schedule property herein. It further discloses that the said suit came to be decreed against the defendants therein restraining them permanently from interfering with possession of the M/s Divine Light School for Blind over the petition schedule property herein,

56. Ex.D5 is the certified copy of the judgment dated 24.04.2010 passed in OS 1538/2005. It shows that One Mr. K.C. Narasimhulu and Mr. Aneees Pasha have filed the suit for specific performance of contract based on the sale agreement dated 17.10.1996 said to be executed by Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson along with the Mr. Rajendran and the Mr. N.H. Rustumji, the Objector herein. It further discloses that relief of the specific performance of agreement of sale

dated 17.10.1996 has been declined by the court and granted relief of recovery of earnest money with interest to be recovered from the Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson.

57. Ex.D6 is certified copy of the plaint filed in O.S No. 535/2017. It reveals that the Objector herein has filed suit for based on his tittle deeds dated 23.02.2005 and to set aside the judgment and decree passed in O.S No. 674/2008.

58. Ex.D7 and 8 are certified copies of the order sheet and memorandum of appeal in RA No. 35/2010, It discloses that the the Objector herein preferred appeal against the judgment and decree passed in O.S 415/1997 and said appeal has been dismissed for default and non- prosecution on 01.02.2018.

59. Ex.D9 is Form No.15. It reflects the transaction took place in respect of the petition schedule property.

60. Ex.D11 is e FIR No. 2172017A0007 dated 12.05.2017 registered before CBI,/ACU-IV, New Delhi against three persons including the objector herein for the offense punishable under 13(2) R/w 13(1)(d) R/w 120-B R/w 420 IPC. Ex.D12 is the FIR No. 0150 dated 09.05.2011 registered before the

Ashoknagar Police station Bangalore City against four persons including the objector herein for the offence punishable under section 143, 147, 307, 120B and 149 of Ipc.

61. Ex.D13 and 13(a) are the B-report in CMP 2221/99 and translated copy Ex.P13.

62. It is pertinent to note that the third part applicant/Objector has filed the present application resisting the execution of decree passed by this court in O.S.No. 674/2008. As could be born out from the Ex.P6 and 7 that original DHR had filed suit in O.S.No. 674/2008 against the JDR-Mr. Mark Gomez as power of attorney holders Smt. Ursila, Sri Marcose, Sri John Jeffry and Sri Keny for specific performance of contract dated 14.11.2006 and registered agreement of sale dated 22.03.2004 and said suit came to be decreed based on the memorandum of settlement filed by original DHR and JDR wherein which the JDR has agreed to execute the sale deed in respect of the petition schedule property in favour of original DHR by receiving full and final settlement amount of Rs 1,30,000/- in addition to the sale consideration of Rs 58,70,000/- fixed under the agreement sale deed 14.11.2006 and 22.03.2004.

63. To resist the present execution petition, the Objector has contended in his application that, he has purchased the petition schedule property as per two registered sale deeds both dated 23.02.2005 marked as Ex.P1 and 2 and based on the said sale deeds the Objector lay claim over the petition schedule property. As per rule 101 of the Order XXI of CPC, all question relating to the right, title and interest in the property arising between the parties to a proceeding on application filed under Rule 97 and 99 of Order XXI of CPC has to be decided and determined by the Executing court. To resist the execution of decree, the Objector necessarily requires to show better title to the petition schedule property. The Objector rely on Ex.P1 and 2 to claim the better title to the petition schedule property.

64. As noted above, Ex.P1 and 2 goes to recites that Mr. Markose Tennyson, Mr. Kenny Tennyson represented by their general power of attorney holder Sri K. Rajendran as per the general power of attorney dated 26.02.2004 and as a first party and K. Rajendran as a confirming party have executed the registered sale deed in respect of their $\frac{1}{2}$ undivided share in the petition schedule property in favour of the Objector-Sri N.H.Rustumki like wise Mrs.Urcila Tennyson, Mr. John Jeffry Tennyson jointly as vendors and Sri K. Rajendran as confirming

party, executed the registered sale deed alienating the remaining $\frac{1}{2}$ undivided share in the petition schedule property in favour of Objector- Mr.N.H.Rustumji.

65. In so far as acquiring of right, title and interest over the petition schedule property by Mrs Ursila Tennyson, Mr Markose Tennyson, Mr. John Jeffry Tennson and Mr. Kenny is concerned it is narrated in the Ex.P 1 and 2 sale deeds that Ms. Mary Fernandez had purchased the petition schedule property under the registered sale deed dated 16.10.1959 from One Mrs M.H. Yaull. It is narrated in the Ex.P1 and 2 that the husband of Mrs.Ursila Tennyson and the father of Mr Markose Tennyson, Mr. John Jeffry Tennson and Mr. Kenny Tennyson namely Tennyson Fernandez was the adopted son of Ms. Mary Fernandez . That on demise of Ms Mary Fernandez, Mr. Kenny Tennyson succeeded to the estate left behind by Ms Mary Fernandez. Thereafter on demise of the Mr. Kenny Fernandez, above said Mr. Kenny Tennyson have succeed to the petition schedule property. And being the owners of the petition schedule property, they sold the petition schedule property to the Objector Sri. Rustumji As per Ex.P1 and 2 sale deeds.

66. It is not in dispute that the petition schedule property was acquired by Ms. Mary Fernandes as per sale deed dated 16.10.1959. It is stated in the Ex.P 1 and 2 sale deeds that

the Mr. Tennyson Fernandez being the adopted son of Ms Mary Fernandez succeeded to the petition schedule property. However there is no material placed before the court to show that Mr. Tennyson Fernandez was the adopted son of Ms Mary Fernandez.

67. It is pertinent to note that in the inquiry report submitted by Mr. BNS Reddy, Joint Commissioner of Police, CAR, Bangalore City in pursuant to the direction of the Hnrble High court of Karnataka in WP No. 22743/2005, there is categorical finding that,

“Tennison M Fernandez died on 10.08.1980. In the death certificate his age has been attested as 54 years. His year of birth is 1926. When Mary Fernandez died on 16.01.1971 her age was 53 years. The age of Tennison M. Fernandez who was mentioned as ‘adopted son’ was 45 years (by 1971). The age difference between Mary Fernande and adopted son Tennison M. Fernandez is 7-8 years”.

68. Though the above particular finding is not press into service by the both parties in the present petition, but it is to be noted that when the Objector claim his right over petition schedule property, the flow of tittle to the Objector should be shown to be untainted. In the backdrop of the finding in the report of Mr. BNS Reddy, as noted above, the theory as to Mr.

Tennison Fernandez was the adopted son of Ms.Mary Fernandez appears to be unbelievable.

69. That apart it is to be noted that, there is detailed investigation made, by Mr. BNS Reddy, in respect of the transactions/ sale deeds dated 23.02.2005 and arrived at conclusion that the transactions/ sale deed dated 23.02.2005, under which the Objector claim the title over the petition schedule property, was appears to be not in order and it is done with ulterior motive. In the cross examination of Pw1, the learned counsel for the Lrs of DHR tried to elicit from the mouth Pw1/Objector as to the sale transactions dated 23.02.2005 are not all good but to it is suspicious indicating foul play to grab the petition schedule property. However Pw1/Objector denied it to be true. Based on the above said report, the Hnr'ble High court Karnataka, protecting the possession of the School for blind over the petition schedule property allowed the parties workout their remedies in respect of the petition schedule property before the Civil Court.

70. It is pertinent to note that, Sale deeds as per Ex.P 1 and 2 has also been put to challenge in the suit in O.S. No.1538/2005 i.e the suit filed by Mr. K.C. Narasimhulu and Mr. Aneesh Pasha. In which the Objector herein was the defendant 6. In the said suit the Objector herein as defendant

No.6 had put forth plea that he was Bonafide purchaser of the petition schedule property herein. The court, in the said suit, answering addl. Issues in respect of the title of the Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson and issues as to whether Objector herein is the bonafide purchaser of the petition schedule property herein, has categorically held that Mrs. Urcilla Tennyson, Mr. Markose Tennyson, Mr. John Jeffry Tennyson and Mr. Kenny Tennyson failed to establish title to the petition schedule property and therefore the defendant No.6 therein (the Objector herein) failed to prove valid title to the petition schedule property herein.

71. It is to be noted that, there is nothing produced before the court to show that the above said finding in O.S. No. 1538/2005 has been reversed by any court. Therefore, said finding is still subsisting. Therefore the title of the Objector is not the better title to lay the claim over the petition schedule property.

72. Apart from suit in O.S.No. 1538/2005 in which the title of the Objector held to be defective, Ex.D 13 and 22 the plaint and judgment passed in O.S No.722/2011 speaks that Mr. Gaffar Baig filed suit against the defendants namely M/s. Divine Light School for blind along with other defendants

including the JDR, Sri K. Rajendran and Smt. Urcila Tennyson, Sri Markose Tennyson and Sri John Jeffery Tennyson in respect of petition schedule property praying for relief of declaration that Mr. Gaffar Baig is the absolute owner of petition schedule property herein by virtue of registered sale deed dated 07.01.2011 and to declare that registered sale deed dated 07.01.2011, sale deed dated 02.03.2007, **23.02.2005** and the judgment passed in 1528/2005, in O.S.No.674/2008, and in O.S.No.250/2011 and the sale agreement dated 05.07.2009 are not binding on the -Mr. Gaffar Baig- the plaintiff therein. The judgement passed in O.S.No. 722/2011 discloses that, said suit has been decreed and it was declared that Mr. Gaffar Baig is the absolute owner of petition schedule property herein by virtue of registered sale deed dated 01.01.2011 and among the other sale deeds the sale deeds under which the Objector claim title over the petition schedule property I.e sale deed dated 23.02.2005, has been declared as null and void.

73. In the cross examination of Pw1 at Page No. 17 Pw1 admit that the judgment and decree passed in O.S No. 722/2011. Thus , All those documents clearly establishes that the sale deed under which the Objector claim title to the petition schedule property is held to be null an void. Therefore the Objector has failed to establish better tittle to the petition schedule property.

74. In so far as the possession of the Objector over the petition schedule property is concerned, it is pertinent to note that, Ex.D4 judgment dated 23.11.2009 passed in O.S No. 415/1997 speaks that M/s Divine Light School for Blind filed the suit against Mr. Huskun Teleson, Mr. Marcose Teleson, Mr. Jon Jepre Teleson, Mr. Netelson and Mr. N.H. Rusthumji, the Objector herein for permanent injunction in respect of the petition schedule property and said suit has been decreed in favour of the Plaintiff therein (M/s Divine Light School for Blind) holding that the plaintiff therein is in the possession of the petition schedule property and the defendants therein including the Objector herein has been restrained from interfering with the possession of plaintiff therein over the suit property. The judgment passed in the O.S.No. 415/1997 attained its finality as same has not been reversed as it could be seen from Ex.D 7 and 8 that the appeal preferred by the Objector against the judgment and decree passed in O.S. No. 415/1997 has been dismissed for non- prosecution.

75. It is also necessary to note that the Hon'ble High Court Karnataka vide order dated 06.02.2013 in WP No. 22743/2005(GM-RES-PL), marked as Ex.D3, has observed in respect of the possession of the petition schedule property that the possession (in respect of the petition schedule property) of the Blind School is protected as per order dated 01.08.2012. It

is admitted by the Objector in his cross examination at page No.11 that he has not been in actual possession of the petition schedule property. Therefore It is also clearly proved that the Objector has not been in possession of the petition schedule property and the recitals in the Ex.P1 and 2 as to the Objector has been put in possession petition schedule property is far from truth. Thus as discussed above, the Objector failed to establishes his title and possession over the petition schedule property, Consequently the point formulated above is answered in the negative.

76. **POINT NO.2:** In view of the discussion made above, the court proceed to pass following;

ORDER

I.A.No.VI filed by the objector namely Mr.
N.H. Rustumji under Order I Rule 10(2) read
with Order XXI Rule 97 read with section 151 of
CPC is hereby dismissed on cost of Rs.10,000/-.

(Typed by me, corrected and then pronounced by me in the open court this the
12th day of June, 2025)

(Abdul Saleem)
Prl.Senior Civil Judge,
Bangalore Rural Dist., Bangalore.

ANNEXURE**List of witnesses examined on behalf of Objector :**

O.W.1	N.H. Rustumji
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List of documents exhibited by the Objector:

Ex.P1&2	C.C. of Sale Deeds
Ex.P1(a)&2(a)	Original sale deeds of Ex.P1 & 2
Ex.P3	Tax assessment register extract
Ex.P4	C.C. of affidavit in OS 506/99 filed by Tennyson
Ex.P5	Deposition -cross of Markose Tennyson in O.S.722/2011
Ex.P6&7	C.C. of plaint & compromise petition filed in O.S.674/2008
Ex.P8	Encumbrance certificate
Ex.P9	C.C. of order sheet in OS 674/2008
Ex.P9(a)	Signature of RW.1
Ex.P10	C.C. of W.S. in OS 722/2011
Ex.P11&12	C.C. of plaint & WS in OS 25950/10
Ex.P13	C.C. of plaint in OS 722/2011
Ex.P14	C.C. of W.S. in OS 535/2017
Ex.P15	C.C. of evidence of Markose Tennyson in O.S.722/2011
Ex.P16&17	Registered Agreement of sale
Ex.P18	Registered GPA
Ex.P19&20	General Power of Attorney
Ex.P21	Affidavit
Ex.P22	C.C. of Judgment in OS 722/2011

Ex.P23 C.C. of order in WP No.22743/2005

List of witnesses examined on behalf of Respondent :

R.W.1 S. Shashikala

List of documents exhibited by the Respondent:

Ex.D1	C.C. of order in W.P.22743/2005,dt.14.07.11
Ex.D2	C.C. of Enquiry report
Ex.D3	C.C. of order in WP 22743/2005
Ex.D4	C.C. of Judgment in OS 415/1997
Ex.D4(a)	Portion of line in page No.24
Ex.D5	C.C. of Judgment in OS 1538/2005
Ex.D6	C.C. of plaint in OS 535/2017
Ex.D7&8	C.C. of order sheet & appeal memo in R.A.35/10
Ex.D9	Encumbrance certificate
Ex.D10	E-copy of E.C.
Ex.D11	E-copy of FIR
Ex.D11(a)	Certificate under Section 65B
Ex.D12	C.C. of FIR No.150/11
Ex.D13	Copy of B-report in CMP 2221/99
Ex.D13(a)	Translated copy

(Abdul Saleem)

Prl. Senior Civil Judge,
Bengaluru (R) Dist., Bengaluru.

