



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 28TH DAY OF OCTOBER, 2025
BEFORE
THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY
WRIT PETITION NO. 29 OF 2023 (GM-CPC)

BETWEEN:

1. SRI SRINIVASA GOWDA
S/O THIMMEGOWDA
ELECTRICIAN
AGED ABOUT 57 YEARS
RESIDENT OF 1ST MAIN
1ST CROSS, RAJIV GANDHI NAGAR
LAGGERE, BENGALURU - 560 056.
2. SRI K. THIMMEGOWDA
S/O KEMPA THIMMAIAH
AGED ABOUT 86 YEARS
RETD. KIRLOSKAR EMPLOYEE
PARVATHINAGAR OPP
VIDHANA SUDHA LAYOUT
LAGGERE, BENGALURU - 560 056.

...PETITIONERS

(BY SRI PAWAN KUMAR, ADV., FOR
SRI H. DEVENDRAPPA, ADV.)

AND:

SRI MANJUNATH. N
SINCE DECEASED BY LRS

1. SMT. ANUSUYA MANJUNATH
W/O LATE MANJUNATH N
AGED ABOUT 77 YEARS.
2. SMT. LATHA B
D/O LATE MANJUNATH N
W/O B. CHANDRASHEKAR
AGED ABOUT 48 YEARS.

RESPONDENTS 1 AND 2 ARE
R/AT 144, 14TH MAIN ROAD



KALIDASA LAYOUT
SRINAGAR, BENGALURU - 50.

SRI M. RAKESH
SINCE DECEASED BY HIS LRS

3. SMT. VAISHALI N
W/O LATE RAKESH
AGED ABOUT 32 YEARS
R/A NO.108, 4TH CROSS
BEHIND GANESHA TEMPLE
HEGANAHALLI CROSS
VISHWANEEDHAM POST
BANGALORE - 91.

...RESPONDENTS

(BY SRI HANUMANTHAPPA A, ADV.)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER PASSED IN EXECUTION PETITION NO. 2593/2011 DATED 27.10.2022 BY THE XIV ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE VIDE ANNEXURE-E.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. The judgment debtors are before this Court in this petition filed under Article 227 of the Constitution of India with a prayer to set-aside the order dated 27.10.2022 passed in Execution Petition No.2593/2021 by the Court of XIV Additional City Civil and Sessions Judge, Bengaluru.
2. Heard the learned counsel for the parties.



3. Respondents herein had filed OS No.8997/1998 before the jurisdictional Civil Court at Bengaluru against the petitioners herein seeking the relief of declaration of title, possession and also for a mandatory injunction directing the defendants to dismantle the unauthorised construction on the schedule property. The said suit was decreed by judgment and decree dated 26.11.2010 and the said judgment and decree has attained finality. The decree holders have filed Execution No.2593/2011 before the Trial Court to execute the decree in OS No.8997/1998 dated 26.11.2010. In the said proceedings, delivery warrant was issued which was returned with an endorsement that when the suit schedule property was inspected, it was found that measurement of the property is East to West - 40 feet and North to South - 30 feet. Whereas in the decree passed in the suit, it is mentioned that property measures East to West 30 feet and North to South 40 feet. Petitioners, therefore, had made a request before the Executing Court to hold an enquiry and this request was rejected by the Trial Court by the order impugned and delivery warrant was reissued directing the bailiff to put the decree holders in



possession of the property in terms of the decree. Being aggrieved by the same, judgment debtors are before this Court.

4. Learned counsel for the petitioners having reiterated the grounds urged in the petition submits that since there is a discrepancy in the measurement of the suit schedule property, an enquiry is necessary to identify the property. The Trial Court has failed to appreciate this aspect of the matter. Accordingly, he prays to allow the petition.

5. Per contra, learned counsel for the respondents has argued in support of the order impugned.

6. The respondents/decreed holders are declared as the absolute owners of the suit schedule property and the defendants/judgment debtors, who are in possession of the said property are directed to hand over vacant possession of the suit schedule property after demolishing the unauthorised construction put-up by them in the said property. Undisputedly, the said judgment and decree has attained finality and the



Regular First Appeal filed by the judgment debtors before this Court has been dismissed.

7. There is a specific finding recorded by the Trial Court that the defendants are in possession of the suit schedule property of which the respondents are the lawful owners. The discrepancy is with regard to the measurement of the site. It appears that in the decree, measurement of the property is mentioned as East to West 30 feet and North to South 40 feet. The actual measurement of the property, when inspected, after the delivery warrant was issued by Executing Court was found to be East to West 40 feet and North to South 30 feet. It is not in dispute that the boundaries of the property remain the same. Therefore, there is no difficulty to identify the property. It is trite that whenever there is any discrepancy with regard to the measurement of the property, the boundaries will always prevail. Since the property in question has been identified by its boundaries, even at the time of spot inspection, which was held after the delivery warrant was issued, I am of the opinion that the Trial Court was fully justified in rejecting the prayer made by the judgment debtors to hold an enquiry for the purpose of



identification of the property. The decree holders, who have a decree in their favour ever since the year 2010 are before the Executing Court since the year 2011 and they are not in a position to enjoy the fruits of the decree. Therefore, I am of the opinion that the writ petition does not merit consideration. Accordingly, the same is ***dismissed***.

8. The Executing Court is directed to expeditiously dispose off the Execution Petition on its merits.

**Sd/-
(S VISHWAJITH SHETTY)
JUDGE**