



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE R. NATARAJ

REGULAR FIRST APPEAL NO. 1321 OF 2025

BETWEEN:

MR. ZABIULLAH,
S/O MR GHOUSE PEER,
AGED ABOUT 56 YEARS,
R/AT NO. 438, 2ND CROSS,
RASOOL LAYOUT, VIDYA SAGAR,
SARAIPALYA MAIN ROAD,
ARABIC COLLEGE POST, BENGALURU - 560 077.

...APPELLANT

(BY SRI. M.D.RAGHUNATH, ADVOCATE)

AND:

1. SMT LALITHA K S
W/O SRI K K MEDAPPA,
AGED ABOUT 67 YEARS,
2. SRI K K MEDAPPA
S/O LATE SRI K M KARIAPPA,
AGED ABOUT 83 YEARS,

BOTH ARE R/AT
NO. 437, 7TH MAIN,
OUTER RING ROAD, HRBR,
KALYANNAGAR, BENGALURU - 560 043.
3. SRI AKRAM PASHA
S/O LATE SRI GOUSE PEER,
AGED ABOUT 54 YEARS,
R/AT NO. 146/7, SARIPALYA,
ADJACENT TO NEW SHINE GRANITES,
THANISANDRA MAIN ROAD,





BENGALURU - 560 045.

...RESPONDENTS

(VIDE ORDER DATED 11.11.2025,
SRI.VIGNESH SUBBAIAH, PARTY IN PERSON
(AUTHORISED REPRESENTATIVE ON BEHALF OF R1 AND R2);
NOTICE TO R3 IS DISPENSED WITH)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE
ORDER DATED 12.11.2024 PASSED ON I.A.VI IN EX.NO.1409/2019
ON THE FILE OF THE XXX ADDITIONAL CITY CIVIL AND SESSIONS
JUDGE, BENGALURU, REJECTING THE I.A.NO.VI FILED UNDER
ORDER XXI RULES 97, 99 AND 101 R/W SEC.151 OF CPC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R. NATARAJ

ORAL JUDGMENT

The objector in Execution Petition No.1409/2019, on the
file of the XXX Additional City Civil and Sessions Judge at
Bengaluru (henceforth referred to as 'Executing Court'), has
filed this appeal challenging the order dated 12.11.2024, by
which his application under Order XXI Rules 97, 99 and 101
read with Section 151 of the Code of Civil Procedure, 1908
(henceforth referred to as 'CPC') was rejected.

2. (i) The respondent Nos.1 and 2 filed
O.S.No.4933/2012 to evict the respondent No.3 from the suit



property. It was their claim that the respondent No.3 was a tenant occupying the suit property and that he had failed to vacate the same even after his tenancy was terminated. The suit after contest was decreed and the respondent No.3 was directed to quit and deliver vacant possession of the suit property.

(ii) The respondent Nos.1 and 2 then filed Ex.P.No.1409/2019 to execute the decree passed in O.S.No.4933/2012. During the pendency of the execution petition, the appellant herein filed an application under Order XXI Rules 97, 99, 101 read with Section 151 of CPC, contending that the respondent Nos.1 and 2 had sold the suit property to one Mr.M.R.Shariff in terms of a sale deed dated 21.06.2018 and that the appellant was inducted into the suit premises as a tenant on 21.01.2023 and therefore he was entitled to object the execution of the decree as against him.

(iii) This application was opposed by the respondent Nos.1 and 2, who denied having sold the suit property to Mr.M.R.Shariff in terms of a sale deed dated 21.06.2018. They also alleged that the said application was filed at the instigation



of the Judgment Debtor (henceforth referred to as 'JDr'). They contended that the JDr had filed RFA No.448/2019 before this Court, where there was an order that the JDr shall not enter into any transaction or execute any document in favour of Mr.M.R.Shariff or anyone in relation to the suit schedule property nor induct Mr.M.R.Shariff into the occupation of the suit schedule property. Later, the JDr filed an application to implead Mr.M.R.Shariff in RFA No.448/2019, but he did not vacate and deliver vacant possession of the suit property.

3. (i) They contended that they did not execute any power of attorney or an agreement of sale in favour of Mr.M.R.Shariff and that the sale deed dated 21.06.2018 brought out in the name of Mr.M.R.Shariff is fraudulent and in that regard, they had filed a complaint before Sampigehalli Police Station and the police had filed a charge sheet against Mr.M.R.Shariff.

(ii) They also contended that Mr.M.R.Shariff had thereafter sold the property to Mr.Afzal Khan and Mr.Ahmed Basha, in terms of the sale dated 03.07.2018. Consequently, the said Mr.Afzal Khan and Mr.Ahmed Basha, were also added



as accused in C.C.No.13656/2021, which is pending consideration before the VII ACMM, Bengaluru. It is also contended that neither the purchaser Mr.M.R.Shariff nor the subsequent purchasers, namely Mr.Afzal Khan and Mr.Ahmed Basha, are in possession of the suit schedule property.

(iii) The objector with an intent to create documents filed a suit for injunction against Mr.M.R.Shariff and respondent No.2 in O.S.No.25463/2023, where the Court had rejected an application filed by him for interim injunction. It is therefore contended that the objector is in no way concerned with the suit property and the application filed is only to harass and cause inconvenience to them.

4. Based on these contentions, the Executing Court framed the following points for consideration:

"1. Whether the IA No.VI under Order XXI Rules 97, 99, 101 Read with Sec.151 of CPC filed by the objector deserves to be allowed?

2. What Order? "

5. The Executing Court, after perusing the material placed on record held, *"It is clear that objector has not claimed*



his independent right in respect of the suit schedule property, but as a tenant under M.R.Shariff. In the judgment passed by the Hon'ble High Court in RFA No.447/2019 dismissed the appeal of JDr and confirmed the order passed by this Court in O.S.No.4933/2012. Further, the Hon'ble High Court has also directed JDr not to enter into any transaction or execute any document in favour of Mr.M.R.Shariff or anyone else in relation to the suit schedule premises nor induct the said M.R.Shariff into occupation of the suit schedule premises." It then held that, "The question of determining the ownership of the property to adjudicate the application is not necessary as the objector himself has categorically admitted that he is claiming right as a tenant under JDr, which clearly manifests the fact that he is not at all claiming any independent right in respect to the suit schedule property and the lease agreements are hit by Section 52 of the T.P. Act and Rule 102 of Order XXI of CPC. Significantly, the objector has also not established that he has independent right, title or interest and possession over the suit schedule premises under the lease cum rental agreement and specifically he is claiming that he is tenant under the JDr. Therefore, on considering the above observations this Court is



of the view that referring the matter for trial is not warranted in the present set of facts and circumstances of the case."

6. It further held that *"DHR has also produced copy of the I.A whereby M.R.Shariff had made an application before the Hon'ble High Court of Karnataka in RFA No.448/2019 and the said application was dismissed. Therefore, the right of M.R.Shariff in respect of suit schedule property has not been established and accordingly, the objectors being the tenant under M.R.Shariff failed to establish his independent right in respect of the suit schedule property and therefore, the application of I.A No.VI filed by the objector deserves to be rejected"*. Being aggrieved by the said order, the appellant/objector is before this Court in this appeal.

7. Learned counsel for the appellant contended that the Executing Court proceeded on the premise that the objector is claiming rights under the Judgment Debtor, while in fact the objector is claiming tenancy rights under Mr.M.R.Shariff, who had purchased the suit property from the respondent Nos.1 and 2, who are the decree holders in O.S.No.4933/2012. He therefore contends that the objector had made out a case for



trial. If the respondent Nos.1 and 2 had conveyed the suit property to Mr.M.R.Shariff then they don't have a subsisting right to execute the decree passed in O.S.No.4933/2012. He thus contends that the Executing Court committed an error in rejecting the application on a false premise.

8. Per contra, the power of attorney of the respondent Nos.1 and 2 submits that the appellant claims that Mr.M.R.Shariff had purchased the property from the respondent Nos.1 and 2, vide sale deed dated 21.06.2018, while Mr.M.R.Shariff had thereafter agreed to convey the property to Mr.Afzal Khan and Mr.Ahmed Basha vide agreement dated 03.07.2018. He submits that Mr.M.R.Shariff could therefore not have inducted the objector into the property as a tenant vide rental agreement dated 21.01.2023. He therefore submits that the documents are concocted by the JDr along with the objector as well as Mr.M.R.Shariff and his team. He submits that a valid decree obtained by the respondent Nos.1 and 2 is not allowed to be executed through oblique means adopted by the objector, JDr and Mr.M.R.Shariff and others. He therefore prays that the order passed by the Executing Court be upheld.



9. I have considered the submissions of the learned counsel for the appellant as well as the son of the respondent Nos.1 and 2, who claims that he has authority to submit before this Court.

10. The point for consideration that arises in this appeal is:

"Whether the appellant/objector had established a cause for adjudication of his objection by the executing Court?."

11. A perusal of the order passed by the Executing Court shows that the objector was claiming as a tenant in the suit schedule property under one Mr.M.R.Shariff, who purportedly had purchased the suit schedule property from the respondent Nos.1 and 2. In support of such a contention, the objector had placed on record a sale deed dated 21.06.2018 purportedly executed by the respondent Nos.1 and 2 in favour of Mr.M.R.Shariff. He has also placed on record a lease agreement dated 21.01.2023 executed by Mr.M.R.Shariff. Therefore, the Executing Court was not right in holding that the objector was claiming under the JDr and therefore he had no independent right. As a matter of fact, when it was claimed by



the objector that the respondent Nos.1 and 2 had disposed of the suit property vide sale deed dated 21.06.2018, the Executing Court was bound to consider whether the decree in question was executable or not.

12. In that view of the matter, the impugned order passed by the Executing Court rejecting the application filed by the objector deserves to be interfered with. Hence, the point for consideration framed by this Court is held in favour of the appellant/objector. However, it is necessary to add a word of caution, as the respondent Nos.1 and 2 have obtained a decree of ejectment against Mr.Akram Pasha/respondent No.3 on 02.01.2019. It could be that the said Mr.Akram Pasha has set up the objector as well as Mr.M.R.Shariff, so that he could continue in possession of the suit property. Therefore, the Executing Court is bound to ensure that the process of law and Court is not abused and misused by Mr.Akram Pasha/respondent No.3 herein, by issuing a delivery warrant and if it is found that Mr.Akram Pasha/respondent No.3 is in possession, the Executing Court shall ensure his eviction from the property. However, if it is found that the objector is in



possession, the Executing Court shall determine the obstruction application. Likewise, since it is claimed that Mr.M.R.Shariff has purchased the property from the respondent Nos.1 and 2, that question too shall be determined by the Executing Court. Since it is stated that Mr.M.R.Shariff has now executed an agreement of sale in favour of Mr.Afzal Khan and Mr.Ahmed Basha, the Executing Court shall implead the said Mr.M.R.Shariff, Mr.Afzal Khan and Mr.Ahmed Basha as obstructors in the execution petition and finally decide the rights of the parties as provided under Section 46 of the CPC.

13. In that view of the matter, the following order is passed:

ORDER

- i. This appeal is ***allowed***;
- ii. The impugned order on IA No.VI dated 12.11.2024 passed by the XXX Additional City Civil and Sessions Judge at Bengaluru, in Execution Petition No.1409/2019, is set aside;
- iii. The Executing Court is directed to issue a delivery warrant to execute the decree in



O.S.No.4933/2012 and if it is found that the Judgment Debtor is in possession, the executing Court shall ensure that the decree is executed. However, if it is found that Mr.Zabiullah/appellant is in possession, the delivery warrant shall not be executed;

- iv. The Executing Court shall implead Mr.M.R.Shariff S/o A.R.Shariff, residing at House No.105, I Block, Chikka Basti, Bengaluru and Mr.Afzal Khan S/o Late. Asgar Ali Khan, residing at No.148/1, 5th Main, near Ayesha Masjid, Manjunatha Layout, Tanisandra, Bengaluru and Mr.Ahmad Basha S/o Abdul Subhan, residing at No. 1626/A, 12th Main, Sonnappa Block, Pillanna Garden, III Stage, Bengaluru – 560045, as obstructors and proceed to adjudicate upon their claim in respect of the suit schedule property. The execution petition shall be taken up on a day-to-day basis after notice is served to the aforesaid persons;



- v. It is also made clear that if Court notice cannot be served or is avoided by the aforesaid persons, the Executing Court shall affix a copy of the notice on the outer door of the decretal premises and also if necessary, take out substituted service of notice on the aforesaid persons and proceed in accordance with law. After service of notice or after notice to the aforesaid persons is held sufficient, the Executing Court shall proceed to determine the obstruction within a period of three months;
- vi. Since the dispute is regarding as to who is in possession of the premises, the appellant herein shall continue to deposit a sum of Rs.15,000/- per month before the Executing Court with effect from March, 2026 and onwards.

Sd/-
(R. NATARAJ)
JUDGE