



CNR: KAHC010087652022

NC: 2026:KHC:46748
W.P. No.4520/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 29TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.4520/2022 (GM-CPC)

BETWEEN:

1. NEW FOOTWEAR PALACE
OLD COURT ROAD
DAVANAGERE -577002
BY PROPRIETOR
FAREEDA
S/O SIRAJ AHMED
AGED ABOUT 34 YEARS
RESIDING AT DOOR NO.451
NEAR HASBHAVI CIRCLE
CHOWKIPET, DAVANAGERE-577 001.
2. GOOD LUCK FOOTWEAR
OLD COURT ROAD
DAVANAGERE -577002
BY PROPRIETOR-MEHABOOB BAIG
S/O NAZEER BAIG
AGED ABOUT 35 YEARS
R/AT NITUVALI
NEAR DURGAMBIKA TEMPLE
DAVANAGERE -577003.
3. SRI. MANJUNATHA BAGS AND FOOTWEAR
OLD COURT ROAD
DAVANAGERE -577002
BY PROPRIETOR
DINESH NAYAKA
S/O UMBALA NAYAK
AGED ABOUT 30 YEARS
R/AT DOOR NO.661, 7TH CROSS

Digitally signed
by RUPA V

Location:
HIGH COURT
OF
KARNATAKA



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NEAR ANJANEYA TEMPLE
S M KRISHNA NAGAR
DAVANAGERE -577 001.

4. SRI. KALA SHOE AND FANCY STORES
OLD COURT ROAD
DAVANAGERE -577 002
BY PROPRIETOR
KASHINATHA
S/O HARISH CHANDRAPPA
AGED ABOUT 36 YEARS
R/AT DOOR NO.55
NEAR EWS QUARTERS
JALINAGAR
DAVANAGERE-577002.
5. KALABAG CENTRE
OLD COURT ROAD
DAVANAGERE -577002
BY PROPRIETOR
KALANDARA
S/O NOOR AHMED
AGED ABOUT 28 YEARS
R/AT IMAMNAGAR
1ST MAIN IST CROSS
DAVANAGERE-577001.
6. SRI. GURU KOTTURESHWARA HOTEL
NEAR HARIHARA BUS STOP
P B ROAD, DAVANAGERE -577002
PROPRIETOR
S. CHANDRASHEKARAPPA
S/O VIRUPAKSHAPPA
AGED ABOUT 54 YEARS
R/O S P S NAGARA, DOOR NO.1407
KONDAJJI ROAD
DAVANAGERE -577 589.

...PETITIONERS

(BY SRI. KANTHARAJ H, SR. ADV., FOR
SRI. RAVI H.K. ADV.,)



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AND:

1. SRI. PARASHURAMAPPA @ PARASHURAMA
S/O HANUMANTHAPPA HOVALE
AGED 67 YEARS
BUSINESS
HARIHAR TALUK
DAVANAGERE -577002.
2. SMT. RATHNA BHAI
W/O NAGENDRAPPA BONDADE
MAJOR
R/AT MURAKALA COMPOUND
BEHIND JAYASHREE TALKIES
HARIHARA, DAVANGERE-577002.
3. SRI. B.N. TUKARAMAPPA
S/O NAGENDRAPPA BONDADE
MAJOR
R/AT MURAKALA COMPOUND
BEHIND JAYASHREE TALKIES
HARIHARA, DAVANGERE -577002.
4. SMT. LAKSHMI BHAI
D/O NAGENDRAPPA BONDADE
MAJOR
R/AT MURAKALA COMPOUND
BEHIND JAYASHREE TALKIES
HARIHARA, DAVANGERE -577002.
5. SMT. ANJANADEV I
D/O NAGENDRAPPA BONDADE
MAJOR
R/AT MURAKALA COMPOUND
BEHIND JAYASHREE TALKIES
HARIHARA, DAVANGERE -577002.
6. SRI. B. NAGARAJA
S/O NAGENDRAPPA BONDADE
MAJOR



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ATTENDER
R/AT JAYADEVA CIRCLE
DAVANAERE-577 002.

7. SMT. ANUSUYAMMA
W/O M.G. VEERUPAKSHAPPA
MAJOR
R/AT M J V HALLO BRICKS
KAVADINAGARA HATTI
BEHIND WATER TANK
HOLALAKERE ROAD
CHITRADURGA-577501.
8. SRI. SWAMY
W/O M.G. VEERUPAKSHAPPA
MAJOR
R/AT M J V HALLO BRICKS
KAVADINAGARA HATTI
BEHIND WATER TANK
HOLALAKERE ROAD
CHITRADURGA -577501.
9. C. IBBANI
D/O M.G. VEERUPAKSHAPPA
MAJOR
R/AT M J V HALLO BRICKS
KAVADINAGARA HATTI
BEHIND WATER TANK
HOLALAKERE ROAD
CHITRADURGA -577501.
10. SHREE SHIVAMURTHY SHARANARU
CHINMULADRI
MAJOR
BRUHANMATTU (MURUGHARAJENDARA MUTT)
CHITRADURGA -577502.
11. BHARATH BAG CENTRE
PROPRIETOR EJAZ
MAJOR



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OLD COURT ROAD
DAVANGERE -577002.

12. CLASSIC FOOTWARE
PROPRIETOR - BASHEER
MAJOR
OLD COURT ROAD
DAVANAGERE-577002.
13. NEW CLASSIC FOOTWARE
PROPRIETOR YOUNUS
MAJOR, OLD COURT ROAD
DAVANAGERE -577002.
14. H K G N BEEDA CENTRE
PROPRIETOR MUNAVARA
MAJOR
NEAR P B ROAD
OLD COURT ROAD
DAVANAGERE -577 002.
15. H K G N FRUITS
PROPRIETOR FAROQUE
MAJOR
NEAR P B ROAD
OLD COURT ROAD
DAVANAGERE -577002.
16. ADI-SHAKTHI HOTEL AND BAKERY
PROPRIETOR
VEERUPAKSHA, MAJOR
HARIHARA BUS STOP
DAVANGERE -577002.
17. R A FRUITS AND R A BEEDA STALL
PROPRIETOR JAMRUDHU
MAJOR
NEAR P B ROAD
OLD COURT ROAD
DAVANAGERE -577002.



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18. SRI. VEERABHADRESHWARA BEED STALL
PROPRIETOR KARIBASIAH
MAJOR
BUSINESS OPPOSITE TO VIJAYA BANK
P B ROAD, DAVANGERE -577 002.
19. KANAKA BAKERY AND COOL DRINKS
AND TEA/COFFEE BAR
PROPRIETOR, MAJOR
SOMASHEKARA
MAJOR BUSINESS
HARIHARA BUS STOP
P B ROAD, DAVANAGERE -577002.
20. MAHAVEER SUGAR CANE JUICE
PROPRIETOR PAPANNA
MAJOR
HARIHARA BUS STOP
P B ROAD, DAVANAGERE-577002.
21. K N FOOTWEAR
PROPRIETOR KALANDARA
MAJOR
BUSINESS, OLD COURT ROAD
DAVANGERE-577002.
22. IRFANA FOOTWEAR
PROPRIETOR - ABDUL AKBAR
MAJOR
BUSINESS OLD COURT ROAD
DAVANAGERE -577 002.
23. N K FOOTWEAR
PROPRIETOR HAMEED AHMED
MAJOR
BUSINESS
OPPOSITE TO RAILWAY STATION
P B ROAD, DAVANAGERE-57702.



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24. SRI. VINAYAKA HOTEL TEA STALL
PROPRIETOR
POORA RAMA
MAJOR, BUSINESS
OPPOSITE TO RAILWAY STATION
P B ROAD, DAVANAGERE -577002.
25. LINGESHWARA SUGAR -CANE JUICE CENTRE
PROPRIETOR
LINGESHA
MAJOR
BUSINESS
P B ROAD, DAVANAGERE-577002 29.
26. VINAYAKA BEEDA STALLA
PROPRIETOR
T N VEDAMURTHY
MAJOR
BUSINESS
NEAR HARIHARA BUS STOP
P B ROAD, DAVANGERE -577002.

...RESPONDENTS

(BY SRI. B.M. SIDDAPPA, ADV., FOR R1
R2, R11 TO R14, R17, R18, R20 TO R26 ARE SERVED
R3 TO R7, R9, R10, R15, R16 & R19 SERVICE OF NOTICE IS
D/W
V/C/O DTD:20.10.2022, NOTICE TO R8 H/S)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER
DTD.14.2.2022 PASSED BY THE COURT OF THE 1 ADDL SR
CIVIL JUDGE AND JMFC DAVANAGERE REJECTING THE IA
NO.16 FILED UNDER SECTION 27 AND 28(1) AND (3) OF THE
SPECIFIC RELIEF ACT (47 OF 1963) VIDE ANNEXURE-H BY THE
PETITIONER BY ISSUING A WRIT OF CERTIORARI & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON
20.08.2026, COMING ON FOR PRONOUNCEMENT OF ORDER,
THIS DAY, THE COURT MADE THE FOLLOWING:



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CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV ORDER

This writ petition is filed challenging the order dated 14.02.2022 passed on I.A.No.16 in Ex.P.No.128/2016 by the I Additional Senior Civil Judge and JMFC, Davanagere (for short, '***the Executing Court***').

2. Sri.H.Kantharaj, learned Senior counsel appearing on behalf of Sri.Ravi H.K., learned counsel for the petitioners submits that one Parashuramappa S/o Hanumanthappa Huvale filed a suit in O.S.No.100/1998 against Nagendrappa Thukaramappa Bondade for the relief of specific performance of the contract. The said suit came to be decreed by directing to refund earnest money with interest. The decree holder preferred an appeal in RFA No.82/2004 which came to be allowed by decreeing the suit for specific performance and in both the proceedings, the petitioners were not parties. However, in the execution petition filed by the decree holder to execute



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the decree, the petitioners were arrayed as judgment debtors which is impermissible. It is submitted that the petitioners filed an application seeking prayer to rescind the contract on the ground that the petitioners were not parties to the decree and the decree cannot be enforced against them. It is further submitted that the Executing Court rejected the said application without assigning any reasons. It is also submitted that the Executing Court was expected to consider whether the execution proceedings can be maintained and continued against the petitioners as the decree is unenforceable against them. It is contended that the petitioners are the tenants under Beeradevaru Devasathana Jaga Abhivrudhi Trust and they are in possession of the property for several decades and paying rents to the Trust. Therefore, as the decree was obtained without making the Trust as well as the petitioners as parties to the suit and appeal, the same is unenforceable and none of the aspects was considered by



the Executing Court. In support of his contentions, he placed reliance on the following decisions:

- a) CENTRAL BOARD OF TRUSTEES Vs. INDORE COMPOSITE PRIVATE LIMITED¹**
- b) KASTURI Vs. IYYAMPERUMAL AND OTHERS²**
- c) BANK OF BARODA Vs. R.M.PATWA AND ANOTHER³**

3. *Per contra*, Sri.B.M.Siddappa, learned counsel appearing for the respondent No.1-decree holder supports the impugned order and submits that the writ petition is liable to be rejected on the ground of suppression of facts. The petitioners have filed objections in the execution petition which came to be rejected. The same was challenged before this Court in a writ petition which was dismissed by directing the petitioners to avail the alternate remedy of filing an appeal and later the petitioners filed a regular first appeal which was dismissed on the ground of territorial jurisdiction with liberty to file the appeal before

¹ (2018) 8 SCC 443

² (2005) 6 SCC 733

³ Civil Appeal No.2476/1996 dtd 12.01.1996



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the appropriate Court and till this day, no appeal has been filed. It is submitted that the Executing Court has considered all the contentions now urged in this writ petition while rejecting the objections filed by the petitioners in the execution petition. Hence, the Executing Court, considering all the aspects has recorded clear reasons that the petitioners are obstructing the execution of the decree unnecessarily. It is further submitted that the Executing Court has recorded that the sale deed is already executed in favour of the decree holder and only possession is required to be handed over, for which an application for delivery warrant is filed with police protection. It is also submitted that this Court, under Article 227 of the Constitution of India, cannot look into other aspects as the scope of this petition is very limited. It is contended that the petitioners cannot seek rescission of the contract as they are not parties to the agreement. It is further contended that the writ petition lacks *bona fides* and is liable to be rejected as the objections as well



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as the additional objections filed in this writ petition by the respondent No.1 indicate as to how the petitioners have obstructed the execution of the decree which was obtained in the year 2006. Hence, he seeks to dismiss the petition.

4. I have heard the learned Senior counsel appearing for the petitioners, the learned counsel appearing for the respondent No.1, and meticulously perused the material available on record.

5. It is to be noticed that one Parashuramappa S/o Hanumanthappa Huvale filed a suit in O.S.No.100/1998 against Nagendrappa Thukaramappa Bondade seeking for the relief of specific performance of the contract. The said suit came to be decreed vide judgment dated 11.08.2003 by directing the defendant to refund the earnest money with interest. The decree holder preferred an appeal in RFA No.82/2004 which came to be allowed vide judgment dated 03.08.2006 by decreeing the suit as prayed for.



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6. The decree holder initiated execution proceedings in Ex.No.128/2016 against the defendants in the suit as well as the petitioners, who have been arrayed as judgment debtor Nos.10, 14, 15, 16, 17 and 31. The records indicate that the petitioners have filed objections to the execution of the decree on certain grounds. The Executing Court rejected the objections vide order dated 08.02.2018 and thereafter, the petitioners challenged the said order in W.P.No.28359/2019. The Co-ordinate Bench of this Court, vide order dated 12.07.2019, held that the writ petition was not maintainable and the impugned order was appealable and permitted the petitioners to file an appeal and the interim protection of two weeks was granted regarding the execution of the decree. It is to be noticed that the petitioners filed a regular first appeal in RFA No.339/2022 before this Court challenging the order dated 08.02.2018. This Court disposed of the appeal by permitting the petitioners to file an appeal before the Court having territorial jurisdiction. It is contended by the



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learned Senior counsel for the petitioners that the appeal has been preferred and the same is pending.

7. When things stood thus, the petitioners filed an application under Sections 27, 28(1) and 28(3) of the Specific Relief Act, 1963, (for short, '**the Act**') seeking prayer to pass an order of rescission of the contract and to refuse to execute the decree. The said application is supported by an affidavit. The affidavit indicates that the petitioners have been carrying on the business in Beeradevara Devasthana Maidana, P.B.Road, Davanagere, for several decades and they are paying rents to Beeradevara Devasthana Jaga Abhivruddi Trust and in the suit for specific performance as well as the appeal, they were not made as parties. The said application was opposed by the decree holder by contending that the applicants have no legal right to file the application which is filed only with an intention to drag on the proceedings and that they are in illegal occupation and have no right to



challenge the decree. It is also contended that the application is filed when the decree holder was about to take possession of the property. Hence, he sought dismissal of the application. The Executing Court, under the impugned order, rejected the application by recording the reasons that the application was filed only as a delay tactics as the sale deed is already executed in favour of the decree holder and only handing over the possession of the property is left and the decree holder had also filed an application for police protection to break open the lock and door of the suit schedule premises.

8. The primary contention of the learned Senior counsel for the petitioners is that the Executing Court has not considered the contention of the petitioners that the decree is not binding on them as they were not parties to the suit and the decree is not executable against them. It is to be noticed that the Executing Court considered the objections raised by the petitioners herein in its order



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dated 08.02.2018 and rejected the objections and the correctness of the said order is under consideration before the Appellate Court. It is not in dispute that the petitioners were not parties in the suit or in the regular first appeal, and according to them, the decree is unenforceable against them. However, the said issue is required to be considered by the Appellate Court, in the appeal which is pending before the Appellate Court. The decisions relied upon by the learned Senior counsel for the petitioners clearly indicate that the Execution Court cannot go beyond the decree and the decree is enforceable against the judgment debtors i.e. parties to the decree, and not against a third party.

9. Insofar as non-consideration of the contention raised in the application for rescinding of contract by the Executing Court is concerned, there is no dispute that the Executing Court has not considered the contentions of the petitioners as to whether the decree in question can be



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enforced against the petitioners herein who were not parties to the proceedings and they can be evicted is a matter required to be gone into by the Appellate Court where the petitioners have challenged the order dated 08.02.2018. Now the question is whether the application filed by the petitioners under Section 28 of the Act is maintainable before the Executing Court. If the answer is in the negative, then the question of examining the correctness of the reasoning of the order passed by the Executing Court would not arise. To consider the same, it would be useful to extract Section 28 of the Act, which is as follows:

"28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the



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court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require."

[Emphasis supplied]

10. A bare perusal of the aforesaid Section makes it clear that the right is conferred on the judgment debtor / vendor / lessor to seek for rescission of contract between the parties on certain grounds referred in the said Section. The aforesaid Section does not confer any right on the third party to the contract to seek for rescission of contract on certain grounds. In the case on hand, the petitioners are neither parties to the agreement of sale nor to the decree in question which is sought to be executed. Hence, they cannot maintain the application for rescission of contract under Section 28 of the Act. Having come to the



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aforesaid conclusion that the application of the petitioners under Section 28 of the Act is not maintainable, this Court need not go into the correctness of the reasons assigned under the impugned order in the present petition.

11. For the aforementioned reasons, this Court proceeds to pass the following:

ORDER

The writ petition is devoid of merits and the same is hereby ***dismissed***.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV/BSR
List No.: 2 SI No.: 1