



CNR: KAHC010101522020

NC: 2026:KHC:52517
WP No. 4667 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.4667 OF 2020 (GM-CPC)

BETWEEN:

1. SRI.Y.C.ANNAIAH
AGED ABOUT 72 YEARS
S/O LATE CHANDRAPPA
2. SRI.Y.C.SOMASHEKAR
AGED ABOUT 65 YEARS
S/O LATE CHANDRAPPA
3. SRI.Y.C.SUNDARA
AGED ABOUT 62 YEARS
S/O LATE CHANDRAPPA
4. SRI.Y.C.PALAKSHA
AGED ABOUT 58 YEARS
S/O LATE CHANDRAPPA

ALL ARE RESIDING AT
HEBBALE VILLAGE
SOMWARPET TALUK
KODAGU DISTRICT - 571 232

...PETITIONERS

(BY SRI.RAMESHA K R, ADVOCATE)

AND:

1. SRI.H.L.HUCHAPPA
AGED ABOUT 72 YEARS

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S/O LATE LAKKAPPA
SINCE DECEASED BY HIS LRS.,

1(A) SMT.KAVERAMMA
W/O LATE H.L.HUCHAPPA
AGED ABOUT 75 YEARS

1(B) SMT.H.H.TARAMANI
AGED ABOUT 45 YEARS
D/O LATE H.L.HUCHAPPA
W/O H.N.RAJASHEKAR

1(C) SMT.VANAJAKSHI
AGED ABOUT 43 YEARS
D/O LATE H.L.HUCHAPPA
W/O H.E.JAGDISH (JAGANATH)

1(D) SRI.H.H.MANJUNATHA
AGED ABOUT 37 YEARS
S/O LATE H.L.HUCHAPPA

RESPONDENT NOS.1(A TO D) ARE
R/AT HEBBALE VILLAGE AND POST
KASALANAGARA TALUK
NORTH KODAGU
KODAGU DISTRICT – 571 232

1(E) SMT.PADMA
AGED ABOUT 40 YEARS
D/O LATE H.L.HUCHAPPA
W/O KUMAR
R/AT SHANUBHOGANAHALLI VILLAGE
DODDAKAMARAHALLI POST
PERIAYAPATNA TALUK
MYSURU DISTRICT – 571107



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...RESPONDENTS

(NOTICE TO R.1(B) AND R.1(C) IS SERVED AND
UNREPRESENTED;
SERVICE OF NOTICES TO R.1(A & D) IS HELD
SUFFICIENT V/O/D 27.06.2025)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE
RECORDS IN EX.NO.27/2008 ON THE FILE OF THE CIVIL JUDGE
AND JMFC KUSHALNAGAR AND QUASH THE ORDER DATED 21ST
DECEMBER, 2019 ANNEX-H ALLOWING THE EXECUTION PETITION
MADE U/O 21 RULE 32 OF THE CPC, THE JDR NO.1 TO 4 ARE
HEREBY DIRECTED TO BE COMMITTED TO DETENTION IN CIVIL
PRISON FOR PERIOD OF 30 DAYS FORTHWITH AND ETC.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

Captioned petition is filed by the petitioners/
Judgment Debtors assailing the order dated 21.12.2019
passed by the Executing Court in Ex.No.27/2008, whereby
the petitioners/Judgment Debtors Nos.1 to 4 have been
ordered to be committed to detention in Civil Prison for a

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period of 30 days. Aggrieved by the said order, the petitioners have preferred the present writ petition.

2. The principal contention urged by the learned counsel appearing for the petitioners is that the property belonging to the Decree Holder, which was the subject matter of O.S.No.10/2004, was never identified by way of local inspection. It is contended that, even during the course of trial, the Decree Holder was not certain about the exact location and identity of the property. On this premise, it is urged that the Executing Court committed an error in proceeding with the execution and in recording a finding that the property in question had been duly identified. The petitioners have also called in question the findings recorded by the Executing Court with regard to the identification of the property bearing Sy.No.17/3 measuring 0.08 cents as well as the property bearing Sy.No.18/1.



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3. This Court has carefully examined the reasons assigned by the Executing Court while directing the petitioners/Judgment Debtors to be committed to detention in Civil Prison for a period of 30 days. Before proceeding to examine the rival contentions and the legality of the impugned order, it would be appropriate to extract paragraph Nos.22 to 28 and paragraph Nos.30 and 31 of the order passed by the Executing Court in Ex.No.27/2008, which read as under:

"22. During the cross-examination of D.W.1 a suggestion is put to D.W.1 that Sy.No.17/3 is on the southern side of Sy.No.18/1 which has fallen to the share of JDR No.4. The JDR No.4 answers that Sy.No.17/3 is on the southern side. He states in his cross examination that during the time of Durasthi he did not know that Sy.No.17/3 was existing on the southern side. He further states in his cross examination that he do not know that Sy.No.17/3 belongs to the decree holder. It is pertinent here to mention that Sy.No.17/3 is the decreetal property. On further cross examination he agrees to the suggestion that the decree holder has got the decree for Sy.No.17/3.

23. The demeanor of the witness has to be observed here. The witness first says that he do not know about the existence of Sy.no.17/3 on the southern side of Sy.no.18 even though he had contested the O.S.no. 10/2004 against the DHR. The victim i.e., D.W.1 malafide intention to harass the plaintiff can be seen from the answers given by D.W.1.

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24. The D.W.1 further during the cross examination disagrees to the suggestion that the properties shown in photographs at Ex.P.1, Ex.P.2, Ex.P.5 to Ex.P.7 does not belong to the DHR. He further states that the property showed in Ex.P.23 and Ex.P.25 belongs to the JDRs. He further states that the fence put up in Ex.P.23 to Ex.P.25 was put up by JDR No.1 to 3. A suggestion is made to the D.W.1 that the property in Ex.P.1 and Ex.P.2 was the schedule property in O.S.No.10/04. Further suggestion is made to him that the property shown in Ex.P.1 and Ex.P.2 are the same properties as shown in Ex.P.23 and Ex.P.25. The D.W.1 further states that the properties shown in Ex.P.1 and Ex.P.2 indeed belongs to him. Thus it can be seen that the D.W.1 is still laying a claim over the decreetal property. The DW-1 even though is well aware of the decree is still laying a claim over the decreetal property defying the conditions of the court decree.

25. The D.W.1 during his cross examination has further agreed that the property was surveyed in the year 2016 and that he had put signature in the mahazar and he had not objected for the survey. During cross examination it is further elicited that no notice was served to the owner of Sy.No.17/3 i.e., decree holder, while conducting Durasthi of Sy.No.18.

26. This court had appointed the commissioner for survey for conducting the survey of the land in dispute. The surveyor was appointed as a Court Commissioner. The surveyor was examined as C.W.1 in the aforesaid case. C.W.1 has given his evidence in the aforesaid case and he has stated that on 24.11.2016 he conducted the survey of survey number 17/3 and survey No.18 and as filed his survey report. He further states that during his survey he found that 8 cents of land belonging to survey number 17/3 was encroached by the JDR's.

27. During the cross-examination of C.W.1 by learned advocate for JDR. It is elicited that there is a fence between Sy.No.17/2 and decreetal property i.e., Sy.No.17/3. During the cross examination it is further elicited that he had given the report stating that the JDRs have



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encroached into the DHR's property after enquiring from the local people and it is also elicited that the local peoples statements has not been recorded.

28. On appreciation of evidence on record it can clearly seen that Ex.C.2 to Ex.C.4 i.e., the commissioner report, Sketch and P.T. sheets sketch are the most important evidence in the aforesaid case. On perusal of Ex.C.3 it is seen that the decreetal property is marked in the red colour. The decreetal property i.e., Sy.No.17/3 is in triangular shape and it is between Sy.No.18/1 and Sy.No.17/2. In the commissioner report it can be seen that the decreetal property is properly clearly marked in red colour. At Ex.C,4 the court commissioner has given the report stating that Sy.No.17/3 which is shown in the red colour measuring 8 cents has been encroached by the owners of Sy.No.18 i.e., the JDR's herein. Thus, the Commissioner report is very clear to the fact that the JDRS have made encroachment into the property belonging to the DHRs.

29.xxxxx

30. During the cross-examination of D.W.1 the demeanor of the witness has been very hostile, and careless. The D.W.1 during the cross-examination has stated the schedule of Sy.No.18 as being East by road, West and North by Sy.No.11 belonging to Coffee growers society and South by Sy.No.17/2. He does not say anything about Sy.No.17/3 which is the decreetal property and is on the southern side of Sy.No.18. This elicitation of fact through cross examination corroborates with the admission given by D.W.1 in examination in chief, where he admits that the adjoining suit schedule / decree schedule property was also got divided during the partition.

31. The DW-1 blatantly goes on to say that the Ex.P.1 and Ex.P.2 photographs marked in O.S.No.10/4 based on which the decree was passed did not belong to the decreetal property. On the other hand during the further cross examination he agrees that the properties shown in Ex.P.1 and Ex.P.2 are the same properties as shown in

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Ex.P.23 and Ex.P.25. The demeanor of the witness is not truthful and trustworthy."

4. Having perused the aforesaid findings of the Executing Court and the material placed on record, this Court finds that the enquiry undertaken by the Executing Court was necessitated on account of the complaint made by the Decree Holder alleging disobedience of the decree for permanent injunction granted in O.S.No.10/2004. The evidence recorded in the course of such enquiry, particularly the evidence of D.W.1 and C.W.1 coupled with the Commissioner's report, sketch and P.T. sheets produced at Exs.C.2 to C.4, assumes considerable significance in determining the identity and location of the decreetal property.

5. The extracted findings of the Executing Court disclose that D.W.1, who had admittedly contested O.S.No.10/2004, initially pleaded ignorance regarding the existence and location of Sy.No.17/3, notwithstanding the specific suggestion that the said survey number was



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situated on the southern side of Sy.No.18/1. The evidence of C.W.1, the Surveyor appointed as Court Commissioner, however, establishes that a survey was conducted on 24.11.2016 and that, upon such survey, an extent of 8 cents in Sy.No.17/3 belonging to the Decree Holder was found to have been encroached upon by the Judgment Debtors. Significantly, D.W.1 had admittedly participated in the survey and affixed his signature to the mahazar without raising any objection to the survey conducted.

6. The Executing Court, on appreciation of Exs.C.2 to C.4, has recorded a categorical finding with regard to the identity and location of the decreetal property. The sketch at Ex.C.3 indicates that Sy.No.17/3, measuring 8 cents, is triangular in shape and lies between Sy.No.18/1 and Sy.No.17/2. The encroached portion of the decreetal property has been specifically identified and shown in red colour in the sketch. The Commissioner's report at Ex.C.4, read with the evidence of C.W.1, therefore, provides a



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clear basis for the conclusion recorded by the Executing Court that the Judgment Debtors had encroached upon the property belonging to the Decree Holder. The contention that the decreetal property was incapable of identification, therefore, does not merit acceptance.

7. What is of further significance is the inconsistency in the stand taken by D.W.1 in the course of his evidence. At the initial stage of his cross-examination, he disputed the existence and location of Sy.No.17/3 and also sought to contend that the photographs relied upon by the Decree Holder did not relate to the decreetal property. However, in the course of further cross-examination, he admitted that the properties depicted in Exs.P.1 and P.2 were the very same properties shown in Exs.P.23 and P.25. The Executing Court has also taken note of the admission of D.W.1 that the adjoining properties, including the property forming part of the decree schedule, had been divided amongst the Judgment Debtors by way of partition. This



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admission assumes significance in the backdrop of the decree for permanent injunction operating against the present petitioners. While the decree specifically restrains the petitioners from interfering with the possession of the Decree Holder over the decreetal property, the petitioners, under the guise of effecting partition amongst themselves, have proceeded to include the very property which is the subject matter of the decree for permanent injunction. Such conduct, on the face of the decree, amounts to an attempt to circumvent and defeat the binding effect of the decree.

8. The subsequent attempt to dispute the identity of Sy.No.17/3, therefore, cannot be considered in isolation, particularly when the Commissioner's report and sketch furnish a clear identification of the decreetal property.

9. In the circumstances, this Court finds that the Executing Court has undertaken a detailed enquiry into the allegation of disobedience and has recorded its conclusions



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on the basis of the oral and documentary evidence available on record. The findings with regard to the identity of Sy.No.17/3, the encroachment thereof and the conduct of the Judgment Debtors are neither shown to be perverse nor demonstrated to be unsupported by the material on record. A decree passed by a competent Civil Court cannot be permitted to be rendered ineffective by permitting the Judgment Debtors to repeatedly dispute the identity of the decretal property, particularly when the same has been subsequently identified through a Court Commissioner and the survey report has been duly proved in the execution proceedings. This Court, therefore, finds no ground to interfere with the impugned order directing the petitioners to undergo civil imprisonment for the period stipulated therein.

The writ petition, being devoid of merit, stands ***dismissed.***

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Pending interlocutory applications, if any, stand disposed of.

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**(SACHIN SHANKAR MAGADUM)
JUDGE**

NBM
List No.: 1 SI No.: 5