



CNR: KAHC010115902023

NC: 2026:KHC:44151
W.P. No.5180/2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 18TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.5180/2023 (GM-CPC)

BETWEEN:

SMT. THIMMAMMA
W/O LATE THIRUMALEGOWDA
D/O THIMMEGOWDA @ BUKKEGOWDA
AGED ABOUT 62 YEARS
R/AT KIRANGURU VILLAGE
KOPPA HOBLI, MANDYA TALUK
MANDYA DISTRICT-571 428.

...PETITIONER

(BY SRI. VENKATA REDDY C.M. ADV.,)

AND:

1. SEENASWAMY
S/O LATE GUNDAPPA
AGED ABOUT 65 YEARS
R/AT NO.792, 20TH CROSS
GNANABHARATHI 2ND STAGE
NAGADEVANAHALLI
MARIYAPPANAPALYA
BANGALORE-560 056.
2. PUTTASWAMYGOWDA
S/O THIMMEGOWDA @ BUKKEGOWDA
AGED ABOUT 62 YEARS
R/AT NO.3724/23, 2ND MAIN
GOVINDARAJANAGAR
THIMMENAHALLI
BANGALORE-560 040.

...RESPONDENTS

Digitally signed
by RUPA V

Location: HIGH
COURT OF
KARNATAKA



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(BY SRI. GURURAJ K. KULKARNI, ADV., FOR R1
SRI. NAGESH V.R. ADV., FOR R2)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RECORDS IN E.X. NO.58/2016 ON THE FILE OF ADDL. SENIOR CIVIL JUDGE AND JMFC, AT MADDUR. QUASH THE ORDER PASSED DTD 02.11.2022 PASSED VIDE ANNEX-K I.A.NO.VIII IN EX NO.58/2016, AND ALLOWED BY PARTLY ON THE APPLICATION UNDER ORDER 21 RULE 58 AND R/W SECTION 47 OF CPC & ETC.

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

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

ORAL ORDER

This petition is filed challenging the order dated 02.11.2022 passed on IA.No.8 in Execution Case No.58/2016 by the Additional Senior Civil Judge and JMFC, Maddur (for short 'the trial Court').

2. Heard Sri.Venkata Reddy C.M., learned counsel appearing for the petitioner, Sri.Gururaj K. Kulkarni, learned counsel for respondent No.1, Sri.Nagesh V.R., learned counsel for respondent No.2 and meticulously perused the material available on record.



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3. Respondent No.1 herein filed a suit in OS.No.7656/2012 seeking recovery of money. The said suit came to be decreed vide judgment and decree dated 18.12.2015. The Decree Holder thereafter filed Execution Case No.58/2016 seeking execution of the judgment and decree passed in OS.No.7656/2012. In the said execution proceedings, the Executing Court attached the scheduled properties to the execution petition. Thereafter, the petitioner filed an application under Order XXI Rule 58 read with Section 47 of the Code of Civil Procedure, 1908 (for short 'CPC'), objecting to the execution proceedings. The said application was opposed by the Decree Holder by filing objections. The Executing Court, under the impugned order partly allowed the application filed by the objector and modified the orders dated 16.01.2018 and 21.04.2018 by continuing the attachment to the extent of the half share of the Judgment Debtor and proceeded further.



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4. The contention of the learned counsel for the petitioner is that a suit for partition is pending between the petitioner-objector and respondent No.2-Judgment Debtor and until the share is determined in the said suit by way of a preliminary decree, the Executing Court ought not to have ventured to divide the properties.

5. It is to be noticed that the Executing Court, taking note of the objections raised by the petitioner-objector, has recorded the reasons that respondent No.2-Judgment Debtor is a half-sharer and that the remaining half share belongs to the petitioner herein and proceeded to modify its earlier order of attachment of the entire suit property by restricting the attachment only to the extent of the half share of the Judgment Debtor.

6. It is further to be noticed that insofar as the lifting of attachment of the petition properties is concerned, the petitioner cannot have any grievance. Similarly, the petitioner cannot have any grievance in the



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present petition as well as in the execution proceedings insofar as continuation of the order of attachment to the extent of the half share of respondent No.2-Judgment Debtor is concerned. The Executing Court has fully protected the interest of the petitioner by modifying the earlier orders of attachment and restricting the attachment to the extent of the share of the Judgment Debtor. I do not find any error in the order passed by the Executing Court calling for interference.

7. It is needless to observe that if the property attached by the Executing Court is processed further and sale is conducted, the petitioner can raise the said contention in the pending civil suit for partition. If the petitioner succeeds in the said suit, the equities can be worked out by the Court in the final decree proceedings.

8. It is made clear that the Executing Court shall inform the intending purchaser about the pendency of suit in OS.No.73/2018, for partition and thereafter proceed in



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accordance with law. For the aforementioned reasons, the writ petition is devoid of merits and the same is ***rejected***.

Pending applications, if any, stand disposed of.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

ABK
List No.: 1 Sl No.: 12