



CNR: KAHC010115972017

NC: 2026:KHC:47018
W.P. No.47434/2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 31ST DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.47434/2017 (GM-CPC)

BETWEEN:

MISS. SHARADAMMA
D/O LATE H.S. SHIVAPPA
AGED ABOUT 65 YEARS
R/AT NO.293/1, RAMANUJA ROAD
FORT MOHALLA
MYSORE-570004.

...PETITIONER

(BY SMT. SOHANI HOLLA, AMICUS CURAIE)

AND:

1. SRI. H.S. MANOHAR PRASAD
S/O LATE H.S. SHIVAPPA
AGED ABOUT 55 YEARS
R/AT NO.293/1, RAMANUJA ROAD
FORT MOHALLA
MYSORE-570004.
2. SRI. H.S. RAJENDRA PRAKASH
S/O LATE H.S. SHIVAPPA
AGED ABOUT 63 YEARS
R/AT NO.293/1, RAMANUJA ROAD
FORT MOHALLA
MYSORE-570004.
3. SRI. M.R. HARSHA
S/O SRI. H.S. RAJENDRA PRAKASH
AGED ABOUT 35 YEARS
R/AT NO.293/1, RAMANUJA ROAD

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA



NC: 2026:KHC:47018
W.P. No.47434/2017

CNR: KAHC010115972017

FORT MOHALLA
MYSORE-570004.

4. SRI. H.S. BASAVARAJ
S/O LATE H.S. SHIVAPPA
AGED ABOUT 75 YEARS
LECTURER IN PHYSICS
P.C.JABIN COLLEGE
VIDYANAGAR, HUBLI
DHARWAD DISTRICT-580032.
5. SRI. BHARATH
S/O SRI. H.S. BASAVARAJ
AGED ABOUT 40 YEARS
R/AT NO.433, 5TH MAIN
VIVEKNAGAR
BANGALORE-560047.
6. SMT. PUTTAMMA
W/O KENGIAIAH
AGED ABOUT 70 YEARS
R/AT MEENAKSHIPURAM BLOCK
K.R.NAGAR TOWN
MYSORE DISTRICT-571603.
7. SMT. VASANTHAMMA
D/O LATE THIMMEGOWDA
AGED ABOUT 55 YEARS
R/AT HALIYUR BADAVANE
CHUNCHANAKATTE HOBLI
K.R.NAGAR TALUK
MYSORE DISTRICT-571603.
8. SRI. H.S. JAGADEESHWARAN
S/O LATE H.S. SHIVAPPA
AGED ABOUT 60 YEARS
R/AT NO.293/1, RAMANUJA ROAD
FORT MOHALLA
MYSORE-570004.



CNR: KAHC010115972017

NC: 2026:KHC:47018
W.P. No.47434/2017

9. SRI. MANOHAR H.C.
S/O SRI. CHANDRAPPA
AGED ABOUT 67 YEARS
R/AT NO.78, 5TH MAIN
6TH CROSS, E & F BLOCK
RAMAKRISHNA NAGAR
MYSORE-570022.
10. SMT. VEDAVATHI
W/O S. DYAVEGOWDA
AGED ABOUT 64 YEARS
R/T SHAHNASRI NILAYA
BEHIND WATER TANK
BHAGATH SINGH ROAD
HASSAN TALUK, 4TH CROSS
JAYANAGAR
HASSAN DISTRICT-573201.
11. SMT. RADHAVATHI H.C.
ALSO CALLED BY NAME
RADHANAGARAJ H.C.
W/O NAGARAJ H.C.
AGED ABOUT 43 YEARS
R/AT JAMMNAHALLI
SAKALESHPURA TALUK
HASSAN DISTRICT-573134.
12. SRI. H.C. MOHAN
S/O SRI.CHANDRAPPA
AGED ABOUT 62 YEARS
R/OF HENNALI
SAKALESHPURA TALUK
HASSAN DISTRICT-573134.
13. SMT. H.C. TARA
W/O SRI. MALLESH K.A.
AGED ABOUT 56 YEARS
R/AT NO.5546, COPPER DRIVE
APT.101, ERIE PENNSYLVANIA
ZIP-16509-3882, U.S.A.



NC: 2026:KHC:47018
W.P. No.47434/2017

CNR: KAHC010115972017

14. SRI. HEMANTH KUMAR
S/O SRI. N. NARASIMHAIAH
AGED ABOUT 38 YEARS
R/AT NO.322/1, 2ND CROSS
RAMANUJA ROAD
FORT ROAD, MOHALLA
MYSORE-570022.

...RESPONDENTS

(BY SRI. BHARATH B, ADV., FOR
SRI. M.R. SURYA KUMAR, ADV., FOR R14
SMT. GEETHA DEVI M.P. ADV., FOR R2 [ABSENT]
SRI. RAMESHA K.R. ADV., FOR R7 [ABSENT]
V/O/DTD:29.04.2026 NOTICE TO R6, R8 & R12 IS D/W
V/O/DTD:22.06.2021, NOTICE TO R4 IS H/S &
NOTICE TO R1 & R5 IS D/W
V/O/DTD:25.03.2026, NOTICE TO R13 IS H/S
R3, R9, R10, R11 & R12 SERVED)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED
ORDER DATED 7.9.2017 PASSED IN FDP NO.20/1994 BY THE
PRL. SR. CIVIL JUDGE AND CJM, MYSORE AT ANNEX-M & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON
10.08.2026, COMING ON FOR PRONOUNCEMENT OF ORDER,
THIS DAY, THE COURT MADE THE FOLLOWING:

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



CNR: KAHC010115972017

CAV ORDER

This writ petition is filed challenging the issuance of sale certificate in favour of the auction purchaser dated 07.09.2017 passed in FDP No.20/1994 by the Principal Senior Civil Judge and CJM, Mysuru (for short, 'the FDP Court').

2. Smt.Sohani Holla, learned counsel appearing for the petitioner submits that the impugned sale certificate has been issued by the FDP Court without considering the objections of the petitioner in its proper perspective. It is submitted that the respondent No.14 who is the purchaser has deposited the complete amount after a period of 2 months from the date of the auction, which is in clear violation of Order XXI Rule 85 of the Code of Civil Procedure, 1908 (for short, 'the CPC'). It is further submitted that a compromise was entered into by employing fraudulent means, which has not been



considered by the FDP Court. Hence, she seeks to allow the petition.

3. *Per contra*, Sri.Bharath B, learned counsel appearing for Sri.M.R.Surya Kumar, learned counsel appearing for respondent No.14 supports the impugned order and submits that the FDP Court has issued the sale certificate after following due procedure and in compliance with law, which does not call for any interference. Hence, he seeks to dismiss the petition.

4. I have heard the arguments of the learned counsel for the petitioner, learned counsel for the respondent No.14 and meticulously perused the material available on record. I have given my anxious consideration to the submissions advanced on both the sides.

5. The respondent Nos.2 and 3 filed a suit in O.S.No.41/1989 seeking the relief of partition and



NC: 2026:KHC:47018
W.P. No.47434/2017

separate possession against the defendants. In the said suit, the father of the petitioner and other parties to the said suit entered into a compromise dated 22.04.1992 by dividing the property in 1/5th share to all the parties and it was also agreed that the suit schedule properties would be sold and the proceeds of the same would be distributed as per the shares. Pursuant to the same, some of the respondents filed FDP No.20/1994 seeking to pass the final decree as per the compromise and appoint a Court Commissioner to sell the properties and deposit the sale consideration before the Court for subsequent distribution as per the shares. In the said proceeding, the petitioner as well as the mother of the petitioner filed objections stating that the petitioner is the absolute owner of the suit schedule properties by virtue of the Will dated 21.01.1991 and also contended that the compromise in O.S.No.41/1989 was achieved by fraudulent means. The FDP Court rejected the said objections by order dated 10.04.1997. The petitioner further filed an application



under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') seeking to set aside the preliminary decree passed in O.S.No.41/1989 and also filed objections to the main petition. The FDP Court considered the same and passed an order dated 25.06.2008 upholding the preliminary decree by modifying the same by allotting 1/5th share to the petitioner in view of amendment to Section 6 of the Hindu Succession Act, 1956. Subsequently, the respondent No.1 filed an application under Section 151 of the CPC, seeking to order for sale of item No.1 of the suit schedule properties and the petitioner filed objections to the same. The FDP Court, after considering the contentions, proceeded to allow the application and directed that the property be sold in a public auction.

6. It is to be further noticed that the petitioner once again filed objections before the FDP Court stating that she was not aware of the compromise petition, herself



NC: 2026:KHC:47018
W.P. No.47434/2017

and her mother did not sign the compromise and that the house she was staying i.e. item No.1 of the suit schedule properties is a self-acquired property of her father. The FDP Court, considering the said objections, passed an order dated 23.06.2017 that the FDP Court vide its order dated 28.10.2016 had passed a detailed order and the objections of the petitioner had been rejected several times. It is also noted that the sale warrant had already been issued to sell suit item No.1 and the spot sale was already conducted on 16.12.2016, but no Court auction was conducted due to the objections raised by the petitioner. The FDP Court rejected the objections and proceeded to fix the Court auction for suit item No.1 at 3 p.m. on the same day. The case was subsequently recalled at 3.30 p.m., the Court auction was held and the respondent No.14 was the final bidder at Rs.84,00,000/-, which was accepted and the respondent No.14 also deposited a sum of Rs.21,00,000/- i.e. 25% of the total bid amount. The FDP Court further ordered to call the



NC: 2026:KHC:47018
W.P. No.47434/2017

matter on 24.07.2017 for payment of the remaining amount i.e. 75% of the total bid amount. Subsequently, the respondent No.14 made the remaining payment on 24.08.2017 by issuing two cheques for Rs.33,00,000/- and Rs.30,00,000/- and pursuant to the said payment, the FDP Court proceeded to issue the impugned sale certificate dated 07.09.2017.

7. In order to consider the material on record, it would be useful to refer to Order XXI Rule 85 of the CPC, as extracted below:

"85. Time for payment in full of purchase money.- The full amount of purchase money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property."

8. It would further be useful to refer to the decision of the Hon'ble Supreme Court in the case of



CNR: KAHC010115972017

NC: 2026:KHC:47018
W.P. No.47434/2017

BALRAM Vs. ILAM SINGH AND OTHERS¹, wherein it was held as under:

"5. The main point for decision is whether there is non-compliance of Order 21 Rule 85 to render the auction-sale void. The above facts are undisputed. It is beyond controversy that the full amount of purchase money payable by the purchaser into the Court was not paid by him within 15 days from the date of the auction-sale. This result ensues even after giving the advantage of set-off of the decretal amount due to the purchaser decree-holder to which he may have been entitled under Rule 72. The only argument to avoid its consequence is that the shortfall in the deposit was occasioned by a mistake of the Court in the calculation of the amount, of which the appellant was entitled to claim set-off under Rule 72. The question is whether this plea is tenable to avert the inevitable consequences of the failure to comply with the strict requirement of Rule 85.

6. In Manilal Mohanlal Shah v. Sardar Sayed Ahmed Sayed Mahamad [(1955) 1 SCR 108 : AIR 1954 SC 349] this Court examined the scheme of the provisions of Rules 84, 85 and 86 of Order 21

¹ (1996) 5 SCC 705



CNR: KAHC010115972017

NC: 2026:KHC:47018
W.P. No.47434/2017

Code of Civil Procedure and held as under: (SCR pp. 112-17)

"... The principal question which falls to be considered is whether the failure to make the deposit under Order XXI Rules 84 and 85, is only a material irregularity in the sale which can only be set aside under Rule 90 or whether it is wholly void. It is argued that the case falls within the former category and the application under Rule 90 being barred by limitation, the sale cannot be set aside. It is also contended that the Court having once allowed the set-off and condoned the failure to deposit, the mistake of the Court should not be allowed to prejudice the purchasers who would certainly have deposited the purchase price but for the mistake. We are of the opinion that both the contentions are devoid of substance. In order to resolve this controversy a reference to the relevant rules of Order XXI of the Civil Procedure Code will be necessary. These Rules are 72, 84, 85 and 86:

The scheme of the rules quoted above may be shortly stated. A decree-holder cannot purchase property at the court-auction in execution of his own decree without the express permission of the court and that when he does so with such permission, he is entitled to a set-off, but if he



CNR: KAHC010115972017

NC: 2026:KHC:47018
W.P. No.47434/2017

does so without such permission, then the court has a discretion to set aside the sale upon the application by the judgment-debtor, or any other person whose interests are affected by the sale (Rule 72). As a matter of pure construction this provision is obviously directory and not mandatory — See Rai Radha Krishna v. Bisheshar Sahay [(1921-22) 49 IA 312 : AIR 1922 PC 336] . The moment a person is declared to be the purchaser, he is bound to deposit 25 per cent of the purchase money unless he happens to be the decree-holder, in which case the court may not require him to do so (Rule 84).

The provision regarding the deposit of 25 per cent by the purchaser other than the decree-holder is mandatory as the language of the rule suggests. The full amount of the purchase-money must be paid within fifteen days from the date of the sale but the decree-holder is entitled to the advantage of a set-off. The provision for payment is, however, mandatory ... (Rule 85). If the payment is not made within the period of fifteen days, the court has the discretion to forfeit the deposit, and there the discretion ends but the obligation of the court to resell the property is imperative. A further consequence of non-payment



NC: 2026:KHC:47018
W.P. No.47434/2017

CNR: KAHC010115972017

is that the defaulting purchaser forfeits all claim to the property... (Rule 86).

Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase money immediately on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question, of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to resell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances of the present



CNR: KAHC010115972017

NC: 2026:KHC:47018
W.P. No.47434/2017

case there was no sale and the purchasers acquired no rights at all.

It was urged before us that the Court could allow a set-off in execution proceedings under its inherent powers apart from the provisions of Order XXI Rule 19 of the Civil Procedure Code. We do not think that the inherent powers of the Court could be invoked to circumvent the mandatory provisions of the Code and relieve the purchasers of their obligation to make the deposit...."

(emphasis supplied)

7. It is to be noted that the argument that it is only a material irregularity in the sale to attract Rule 90 instead of Rule 85 was expressly rejected; and it was clearly held that Rule 85 being mandatory, its non-compliance renders the sale proceedings a complete nullity requiring the executing court to proceed under Rule 86 and property has to be resold unless the judgment-debtor satisfies the decree by making the payment before the resale. The argument that the executing court has inherent power to extend time on the ground of its own mistake was also expressly rejected. In our opinion the contentions of the learned counsel for the appellant are fully negatived by this decision of the Court."



NC: 2026:KHC:47018
W.P. No.47434/2017

9. The aforesaid Rule and the enunciation of law laid down by the Hon'ble Supreme Court elaborate on the effect of Order XXI Rule 85 of the CPC, and the effect of its non-compliance. The Hon'ble Supreme Court was dealing with the question as to whether the effect of non-compliance of Rule 85 would only be a material irregularity or would amount in nullity of the auction. The Hon'ble Supreme Court, after considering the various decisions, has clearly held that Order XXI Rule 85 of the CPC, is a mandatory provision. It is clearly held that if the purchaser fails make the balance payment within the period of fifteen (15) days, then the entire transaction is null and void.

10. In the instant case, the auction was concluded on 23.06.2017 and the payment of the balance amount was only made on 24.08.2017 after a period of 2 months, which is clearly exceeding the statutory limit as per Order



XXI Rule 85 of the CPC. Hence, in view of the clear enunciation of law laid down by the Hon'ble Supreme Court, I am of the view that the FDP Court has erred in issuing the impugned sale certificate, without appreciating the scope of Order XXI Rule 85 of the CPC, which would render the entire transaction as null and void.

11. It is to be noticed that the petitioner is claiming a right over the title of item No.1 of the suit schedule properties on the basis of the Will dated 21.01.1991. It is also to be noticed that when a Will is executed, the same cannot be altered by way of a subsequent agreement or a compromise unless there is revocation in strict compliance of the scope of Section 70 of the Indian Succession Act, 1925 (for short, 'the Succession Act') as clarified in the decision of the Hon'ble Supreme Court in the case of ***BADRILAL Vs. SURESH AND OTHERS***².

² (2021) 18 SCC 129



CNR: KAHC010115972017

NC: 2026:KHC:47018
W.P. No.47434/2017

12. Furthermore, it is to be noted that the FDP Court, vide its order dated 25.06.2008 has held that the Will dated 21.01.1991 is not disputed by any other party, however, the said Will would be applicable to the extent of the share of the father of the petitioner as the father of the petitioner cannot transfer a joint family property by virtue of a Will and the FDP Court subsequently proceeded to grant 1/5th share to the petitioner. However, the FDP Court has come to the conclusion that the property covered in the Will is a joint family property on the basis of the fact that the father of the petitioner was the manager or the kartha of the co-parcenary family. It is further to be noted that such a presumption cannot be made unless it is proved that there was an existing ancestral income using which the property was purchased. However, the said aspect has not been considered by the FDP Court. Hence, when there is an existing Will that is also admitted and it clearly indicates that certain property is bequeathed on the petitioner, the same cannot be



altered by presuming the property to be a joint family property. If the father of the petitioner intended to consider the property as a joint family property and wanted to partition the same, he would have revoked the Will dated 21.01.1991 and subsequently entered into a partition. Hence, it is submitted that the absence of any such exercise clearly indicates that the compromise petition in O.S.No.41/1989 was acquired by fraudulent means and by misleading the father of the petitioner. However, without expressing any finding on the merits, I am of the considered view that the FDP Court is required to consider the aforesaid aspects as the same are necessary for complete adjudication of the dispute.

13. For the aforementioned reasons, I proceed to pass the following:



CNR: KAHC010115972017

NC: 2026:KHC:47018
W.P. No.47434/2017

ORDER

- a) The writ petition is ***allowed***.
- b) The impugned order issuing the sale certificate dated 07.09.2017 passed in FDP No.20/1994 by the Principal Senior Civil Judge and CJM, Mysuru, is hereby set aside.
- c) The FDP Court is directed to re-consider the objections of the petitioner on merits, keeping in mind the observations made *supra*.
- d) Registry shall transmit back the original records to the FDP Court, immediately.

14. In view of the disposal of the writ petition, the pending interlocutory application does not survive for consideration and is accordingly disposed of.

15. This Court places on record its appreciation for the able assistance rendered by Smt.Sohani Holla, learned Amicus Curiae appearing for the petitioner who is appointed by the High Court Legal Services Committee.



NC: 2026:KHC:47018
W.P. No.47434/2017

CNR: KAHC010115972017

The High Court Legal Services Committee is hereby directed to pay honorarium to Smt.Sohani Holla, for the service rendered by her as Amicus Curiae for the petitioner.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 1 Sl No.: 1