



CNR: KAHC010232782019

NC: 2026:KHC:51059
WP No. 33603 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.33603 OF 2019 (GM-CPC)

BETWEEN:

SMT.SAVITHRI @ JANAKI RAMARAO NADIGER
D/O KRISHNA CHANDRAM JOSHI
W/O RAMARAO NADIGER
AGED ABOUT 78 YEARS
RESIDIG AT
TOTSAN REGACNY APARTMENTS
VIDYANAGAR, HUBLI-580 021

REP. BY HER G.P.A HOLDER
MURALIDHAR MADHUSUDHAN DOULATBAD
S/O LATE MADHUSUDHAN DOULATBAD
AGDJ ABOUT 57 YEARS
RESIDING AT CTS 747
GOGIKATTI ONI
HAVERI-581 110

...PETITIONER

(BY SRI.PUNDIKAI ISHWARA BHAT, ADVOCATE)

AND:

1. NAGARAJ
S/O SHANKAR KRISHNA JOSHI
ADULT
R/AT "MATHRU CHAYA"
14TH MAIN ROAD
3RD BLOCK

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RAJAJINAGAR
BENGALURU -560010

...RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 21.06.2019 PASSED BY THE XXIV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BANGALORE (CCH-06) IN EXECUTION CASE NO.2247/2012 VIDE ANNEXURE-N, IN SO FAR AS IT RELATES TO THE CONCLUSION OF THE SAID COURT TO THE EFFECT THAT THE DECREE HOLDER/RESPONDENT HEREIN TOOK DELIVERY OF THE PROPERTY INVOLVED IN THE SAID PETITION, ON THE BASIS OF THE MEMO PURPORTEDLY DATED 20.06.2019 FILED BY THE RESPONDENT HEREIN ON THE GROUND THAT THE ALLEGED DELIVERY OF THE PROPERTY OBTAINED BY THE RESPONDENT /DECREE HOLDER CANNOT BE CONSTRUED AS THE SATISFACTION OF THE DECREE REQUIRED TO BE RECORDED BY THE EXECUTING COURT IN TERMS OF SECTION 47 OF THE CODE OF CIVIL PROCEDURE, 1908 AS AMENDED AND ETC.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

Captioned writ petition is filed by a third party questioning the order dated 21.06.2019 passed by the learned Executing Court, whereby the Execution Petition

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came to be closed as fully satisfied insofar as delivery of possession of the decree schedule property to the Decree Holder was concerned, while reserving liberty to the Decree Holder to initiate fresh execution proceedings insofar as the claim for mesne profits was concerned.

2. The petitioner, who claims to be a third party to the decree under execution, has called in question the aforesaid order contending that the decree obtained by the respondent-Decree Holder in O.S.No.2017/1985 is itself under challenge at the instance of the petitioner in O.S.No.8401/2017. It is contended that, despite possession not having been delivered to the Decree Holder, the Decree Holder filed a memo stating that possession had been taken and that, in the meanwhile, the entire building had been demolished.

3. In the backdrop of the aforesaid controversy, the short question that arises for consideration is:

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"Whether the petitioner, having failed to secure any interim order in the suit instituted her in O.S.No.8401/2017, can maintain the present writ petition questioning the order passed in the execution proceedings?"

Finding on point for consideration:

4. Before examining the aforesaid question, it would be apposite to advert to the pleadings of the petitioner herself in the application filed under Order XXI Rule 97 read with Sections 47 and 151 of CPC. In particular, paragraphs 4 to 6 of the affidavit filed in support of the said application are relevant and are extracted hereunder:

"4. I submit that, in the meanwhile the decree holder brought the special bailiff to the spot on 17/12/2018 and on the basis of the apparently manipulated delivery warrant wanted to take delivery of the property involved in the above-said suit instituted by the third party obstructionist through me and the same was with the sole intention of depriving the said applicant's vested legal and partible in the suit schedule property of the aforesaid pending suit O.S.No.8401/2017. Subsequently, the defendant No.2 in the said suit i.e., judgment debtor herein has been

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contemplating to hand over the delivery of property involved in the instant proceedings. I submit that both the decree holder and judgment debtor being parties in the above said suit have no right to take delivery of any portion of the suit schedule property over which the plaintiff in O.S.No.8401/2017 i.e., the applicant herein has a vested partible interest.

5. I submit that, no doubt soon after the third party applicant filed the above-said suit she sought for an order of temporary injunction seeking for stay of the operation and execution of the decree dated 06/02/2002 passed by the Hon'ble Court in O.S.No.2017/1985. But the said application came to be rejected by this Hon'ble Court by means of order dated 02/01/2018. The said application came to be rejected mainly on the ground that the third party applicant did not prima-facie satisfy with respect to the adoption of the present decree holder's father i.e., Shanker Joshi by one Tangyevva in the year 1947 and also on the ground that the third party applicant herein in the said suit did not prima-facie satisfy that the above said suit O.S.No.2017/1985 was a collusive suit.

6. I submit that, notwithstanding the above said facts, the plaintiff in the above said suit i.e., the third party herein is entitled to maintain the accompanying application in as much as she claimed an independent right, title and interest over the subject matter of the instant execution proceedings and not being a party to the decree under execution. I submit that in view of the

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decision Apex Court in Brahmdeo Choudhary vs. Rishikesh P Jaiswal and another reported in AIR 1997 SC 856, the applicant herein i.e., third party obstructionist delivery of property involved in the instant proceedings. I submit that both the decree holder and judgment debtor being parties in the above-said suit have not right to take delivery of any portion of the suit schedule property over which the plaintiff in O.S.No.8401/2017 i.e., the applicant herein has a vested partible interest."

(emphasis supplied)

5. A plain reading of paragraph 5 of the aforesaid affidavit makes it evident that the petitioner has instituted O.S.No.8401/2017 seeking, inter alia, a declaration that the judgment and decree dated 06.02.2002 passed in O.S.No.2017/1985 is illegal, null and void and not binding on her. It is equally material that, in the said suit, the petitioner had sought an order of temporary injunction staying the operation and execution of the decree dated 06.02.2002. The petitioner herself admits that the said application came to be rejected by order dated 02.01.2018. Thus, as on the date when the execution proceedings were pursued, there was no interim order



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operating in favour of the petitioner restraining the Decree Holder from executing the decree.

6. The aforesaid admitted position assumes significance in the present proceedings. The petitioner has already invoked the jurisdiction of the competent Civil Court by instituting O.S.No.8401/2017, wherein the very decree sought to be executed by the respondent-Decree Holder is under challenge. The respondent-Decree Holder is arrayed as defendant No.1 in the said suit. More importantly, the petitioner has sought a specific consequential declaration restraining the first defendant from taking delivery of any portion of the suit schedule property in furtherance of the execution proceedings in E.P.No.2247/2012.

7. In this regard, it would be apposite to extract the prayers sought by the petitioner in O.S.No.8401/2017, which read as under:

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"The plaintiff therefore prays for a decree and judgment in her favour for the following reliefs;

(a) Declare that the judgment and decree dated 6th February 2002 passed by the City Civil Judge at Bangalore City in O.S.No.2017/1985 passed in favour of the legal heirs of the deceased Shankar Krishna Joshi in so far as it relates to the suit schedule property described in this plaint, is illegal, unjust, null and void not binding on the plaintiff and other members of the Joint Family headed by the late Krishna Chandrama Joshi;

(b) And consequentially declare that the 1st defendant herein is not empowered to take delivery of any portion of the suit schedule property in furtherance of the pending proceedings in execution case 2247/2012 on the file of the City Civil Judge, Bangalore City;

(c) And further direct a division of the suit schedule property into 22 equal shares and allot and deliver 2 such shares to the plaintiff with reference to good and bad soil;

(d) And to direct the defendant No.2 to pay 2/22th share of income to the plaintiff in respect of the suit schedule property ever since the year 1976;

(e) And direct the defendant No.2 to pay future share of income of the suit schedule property to the

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plaintiff from this date till allotment and delivery of the plaintiff's legitimate share to her;

(f) And direct the defendant to pay full cost of the suit and to grant the plaintiff such other and further reliefs as this Hon'ble Court deems fit under the facts and circumstances of the case."

(emphasis supplied)

8. The reliefs sought in the aforesaid suit demonstrate that the petitioner has already sought adjudication of her alleged independent right, title and interest in the suit schedule property and, consequentially, a declaration that the respondent-Decree Holder is not entitled to take possession pursuant to the decree under execution. The said suit remains pending consideration. The petitioner, however, has failed to obtain any interim order restraining execution of the decree. In these circumstances, the petitioner cannot seek to indirectly secure, in the present writ proceedings, an order which she failed to obtain in the substantive suit instituted by her.



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9. It is also necessary to bear in mind that the impugned order records closure of the execution proceedings insofar as delivery of possession is concerned, on the basis that possession had been delivered to the Decree Holder, while reserving liberty to the Decree Holder to initiate appropriate proceedings insofar as mesne profits are concerned. The question as to whether possession was in fact delivered, whether such delivery was lawful, and whether the petitioner has any independent right over the property are matters which substantially overlap with the issues raised in O.S.No.8401/2017.

10. The reliance placed by the petitioner on the judgment of the Hon'ble Supreme Court in ***Brahmdeo Choudhary v. Rishikesh Prasad Jaiswal and another, reported in AIR 1997 SC 856***, cannot alter the position in the facts of the present case. The petitioner has already availed the remedy of instituting a substantive suit and has sought therein a specific declaration against the

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execution of the very decree in question. Having failed to secure an interim order in that suit, the petitioner cannot simultaneously invoke the writ jurisdiction to obstruct or unsettle the execution proceedings on substantially the same grounds.

11. This Court, therefore, finds no justification to interfere with the impugned order. It is, however, made clear that if the petitioner succeeds in O.S.No.8401/2017, the rights of the parties shall be governed by the decree that may ultimately be passed therein. Equally, any possession said to have been delivered to the respondent-Decree Holder pursuant to the execution proceedings shall remain subject to the outcome of the said pending suit. Accordingly, the point for consideration is answered in the '**negative**'.

12. For the foregoing reasons, this Court proceeds to pass the following;

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ORDER

- (i) The writ petition is devoid of merits and is accordingly ***dismissed***.
- (ii) No order as to costs.

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(SACHIN SHANKAR MAGADUM)