



CNR: KAHC010243522017

NC: 2026:KHC:37544
RSA No. 512 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.512 OF 2017

BETWEEN:

SMT B. R. PREMA
AGED ABOUT 77 YEARS,
D/O LATE T.R. SRINIVASASETTY,
(W/O. SRI. RATNAM)
OCCUPATION BUSINESS IN
HOME APPLIANCES AS
M/S. PREMA ENTERPRISES,
AT NO.460, BAZAAR ROAD,
BANGARPET-563 114.

...APPELLANT

(BY SRI. PREMNATH T N, ADVOCATE)

AND:

1. T. S. RAMAMURTHY
SINCE DECEASED BY LRS
- (a) SMT.SHANTHA
AGED ABOUT 65 YEARS
W/O LATE T.S.RAMAMURTHY
- (b) SRI MOHAN KUMAR
AGED ABOUT 48 YEARS
S/O LATE T.S.RAMAMURTHY

BOTH ARE R/AT NO.416, OLD NO.30
BAZAAR STREET
BANGARPET – 563 114

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Location: HIGH
COURT OF
KARNATAKA





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2. SMT. LAKSHMIKANTHAMMA
S/O LATE H.R. RAJANNA SETTY,
AGED ABOUT 75 YEARS,
R/AT ELE MALLAPA ROAD,
BANGARPET-563 114.
3. H. R. RANGANATH
S/O. LATE H.R. RAJANNA SETTY,
AGED ABOUT 64 YEARS,
R/AT NO.460, BAZAAR ROAD,
BANGARPET-563 114.
4. H. R. MURALI
S/O. LATE H.R. RAJANNA SETTY,
AGED ABOUT 60 YEARS,
R/AT NO.506, BAZAAR STREET,
BANGARPET-563 116.
5. H. R. ASHOKA
AGED ABOUT 52 YEARS,
S/O. LATE H.R. RAJANNA SETTY,
R/AT NO. 552/2, BAZAAR STREET,
BANGARPET-563 114.
6. H. R. RAMALINGAMAT
S/O. LATE H.R. RAJANNA SETTY,
AGED ABOUT 49 YEARS,
R/AT NO.533/C, VEERANNA COMPLEX,
BAZAAR ROAD,
BANGARPET-563 114.
7. H. R. RAGAVENDRA
S/O. LATE H.R. RAJANNA SETTY,
AGED ABOUT 39 YEARS,
R/AT ELE MALLAPPA ROAD,
BANGARPET-563 114.
8. H. R. MANJUNATH
S/O LATE H.R. RAJANNA SETTY,
AGED ABOUT 42 YEARS,



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R/AT ELE MALLAPPA ROAD,
BANGARPET-563 114.

9. SMT. ANANDA LAKSHMI
D/O. LATE H.R. RAJANNA SETTY,
AGED ABOUT 58 YEARS,
W/O. ASWATHA NARAYANA,

PRESENT ADDRESS:
JAGADISHWARA STORES,
NO.88/603, GANDHI ROAD,
KRISHNAGIRI,
TAMILNADU.

...RESPONDENTS

[BY SRI. T SRINIVASAN, ADVOCATE FOR R1(B);
SRI D.N.RAMACHANDRAPPA, ADVOCATE FOR R2 TO R9;
VIDE ORDER DATED 17.11.2025, R1(B) IS TREATED AS LR'S
OF DECEASED R1(A)]

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL
PROCEDURE CODE, AGAINST THE JUDGMENT & DECREE
DATED 30.01.2017 PASSED IN R.A.NO.52/2016 ON THE FILE
OF THE ADDL. SENIOR CIVIL JUDGE AND J.M.F.C., KGF,
DISMISSING THE APPEAL AND CONFIRMING THE ORDER
DATED 05.03.2016 PASSED IN EX.NO.21/2013 ON THE FILE
OF THE PRL. CIVIL JUDGE AND JMFC, BANGARPET REJECTING
THE IA FILED UNDER ORDER 21 RULE 97 AND 101 AND R/W
SECTION 151 OF CPC, PRAYING THIS COURT TO DIRECT TRIAL
COURT HOLD THE RIGHT, TITLE INTEREST AND POSSESSION
OF THE APPLICANT/OBJECTOR IN THE SCHEDULE PROPERTY.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



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CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri Premnath T.N. and Sri T.Srinivasan, learned counsel for the parties.

2. Parties are referred to as plaintiff and defendants as per their original ranking before the Trial Court, for the sake of convenience.

3. Present Second Appeal is by the objector in Execution Case No.21/2013 dismissing her application filed under Order XXI Rule 97 and 101 of the Code of Civil Procedure without holding an enquiry which was appealed before the First Appellate Court in R.A.No.52/2016 which also came to be dismissed by considered judgment dated 30.01.2017.

4. Facts which are utmost necessary for disposal of the present appeal are as under:

4.1 A suit in O.S No.40/2006 came to be filed by the respondent No.1/ decree holder in respect of the following property hereinafter referred to as 'suit property', against



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Smt.Lakshmikanthamma, H.R.Ranganath, H.R.Murali,
H.R.Ashok, H.R.Ramalingam, H.R.Raghavendra, H.R.Manjunath
and Anandalakshmi.

*"All that piece and parcel of shop premises measuring
East West: 18 feet and North South 12 feet, in
property No.460 (old No.300) bearing Municipal
Khatha No.554/506/460, situate at Bazaar Road,
Bangarapet-563 114, bounded on the:*

*East by: remaining portion of the
property belonging to plaintiff.*

West by: Bazar road,

North by: V.R.Rajagopal Setty shop,

*South by: Passage in the same
property leading to residential
premises."*

5. The suit on contest came to be decreed. Against the same, an appeal came to be filed in R.A No.35/2012. Said appeal was also dismissed. Challenging the same RSA No.1187/2013 came to be filed which also got dismissed.

6. Thereby, the decree passed in O.S No.40/2006 became final. Insofar as the other defendants are concerned, they did



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not choose to file any appeal and as such the judgment became final before the Trial Court itself.

7. The judgment passed in O.S No.40/2006 was sought to be executed by filing an execution petition on the file of Principal Civil Judge and JMFC, Bangarpet, in Execution Case No.21/2013.

8. When the execution case was pending for consideration present appellant Smt. B.R.Prema claiming to be the daughter of T.R.Srinivasasetty, who claims to be co-owner of the suit property, filed an application under Order XXI Rule 97 and 101 r/w Section 151 of the Code of Civil Procedure.

9. Said application was opposed by the Decree Holder by filing written objections. The application was heard by the learned Trial Judge and came to be dismissed without holding an enquiry.

10. However, the Executing Court recorded a specific finding that no independent right is made out by the applicant/objector to oppose the decree.



11. Being aggrieved by the same, applicant/objector-Smt.B.R.Prema, filed an appeal before the First Appellate Court in R.A No.52/2016.

12. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties in detail and by considered judgment dated 30.01.2017 dismissed the appeal by raising necessary points and answering the same against the appellant herein.

13. The relevant paragraphs of the order of the First Appellate Court are culled out hereunder for ready reference.

"17. It is not in dispute that O.S.No.40/2006 was filed by the present Decree Holder against the legal heirs of one Rajanna Shetty i.e., the Defendant No.1 to 8/Judgment Debtor No.1 to 8 for eviction and arrears of rent in respect of the suit schedule property before the Hon'ble Civil Judge & JMFC., Bangarpet. It is also not in dispute that the present Appellant/Objector filed I.A.No.13 U/Order 1 Rule 10 R/W Sec.151 of the Code of the Civil Procedure for impleading her as party in the said suit and the said application came to be rejected. It is also not in dispute that the present Appellant/Objector filed W.P.No.1559/2009 being aggrieved by the order



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passed on I.A.No.13 in O.S.No.40/2006 and the said Writ petition came to be dismissed on 8-2-2010. It is also not in dispute that O.S.No.40/2006 came to be decreed on 16-6-2016 and the Defendant No.2 in the said suit filed R.A.No.35/2012 before Senior Civil Judge, KGF and the same came to be dismissed vide its Judgment dt: 17-6-2013. It is also not in dispute that the Defendant No.2 filed RSA No.1187/2013 before the Hon'ble High Court of Karnataka and the same came to be dismissed on 19-7-2013. It is also not in dispute that the Learned Trial Court has issued the delivery warrant and when the Ammena had been to the suit schedule property to execute the delivery warrant, the Judgment Debtor No.2 and one Srinivasa have locked the premises, hence the Ammena has sought for break open the lock. This being the state of affairs, the present Appellant/Objector filed I.A.No.5 before the Trial Court for adjudicating her claim.

18. The important aspect to be noted is that the present Appellant/Objector had already made an attempt to implead herself as party in O.S.No.40/2006 by way of filing I.A.No.13 and the same was rejected. The Appellant/Objector also moved before the Hon'ble High Court of Karnataka in W.P.No.1559/2009 being aggrieved by the Order passed on I.A No.13 in O.S No.40/2006 and the same came to be dismissed on 8-2-2010. After considering the said conduct of the



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Appellant/Objector it is crystal clear that she has made all her attempts to implead herself in O.S.No.40/2006 and when she has not succeeded to implead herself as party in the said suit but now she is contending that her right has to be adjudicated in respect of the suit schedule property. One of the grounds urged by the Learned Counsel for the Appellant/Objector is that O.S.No.12/2009 is pending before Hon'ble Civil Judge & JMFC., KGF and the present suit schedule property is one of the suit schedule property in the said suit, hence the Appellant/Objector has every right to obstruct the decree, hence her claim has to be adjudicated. It is to be noted is that the Hon'ble High Court of Karnataka while dismissing W.P.No.1559/2009 has clearly held that mere filing of O.S.No.12/2009 cannot be considered as she is necessary and proper party to O.S.No.40/2006. It is to be noted is that after dismissal of the said Writ petition by the Hon'ble High Court of Karnataka, the present Appellant/Objector has not moved before the appropriate forum to set aside the order passed by the Hon'ble High Court of Karnataka and to come on record in O.S.No.40/2006. In these circumstances, this Court is of the opinion that the Learned Trial Court has rightly rejected the application i.e., I.A No.5 filed by the Appellant/Objector.

19. The other contention of the Appellant/Objector is that the Decree Holder has obtained the collusive



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decree in collusion with the present Judgment Debtors i.e., Defendant No.1 to 8 in O.S.No.40/2006. The materials on record reveal that the Defendant No.2 filed R.A.No.35/2012 before the Senior Civil Judge & JMFC., KGF and the same came to be dismissed on 17-6-2013. He has also filed RSA No.1187/2013 and the same came to be dismissed on 19-7-2013. If the collusive decree was obtained by the Decree Holder in collusion with the Judgment Debtors, then what was the necessity for the Judgment Debtor No.2/Defendant No.2 to file the Regular Appeal and also Regular Second Appeal before the Hon'ble High Court of Karnataka?. All these aspects reveal before the Court that the Decree Holder has not obtained any collusive decree in collusion with the Judgment Debtors.

20. This Court has also perused the affidavit sworn in support of I.A.No.13 by the present Appellant/Objector in O.S.No.40/2006 and in the said affidavit she has nowhere stated that she was running the Home Appliances in the suit schedule property. But all of a sudden when the Ameena of the Court went to execute the delivery warrant, the Appellant has filed the application i.e., I.A No.5 before the Trial Court. The report of the Ameena dt: 28-2-2014 reveal before the Court that as per the order of the Court in Execution No.21/2013, one Shivananda and one D.Jhon had been to the suit schedule property to execute the delivery warrant as



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per Nazar No.1528/14 and at that time the Judgment Debtor No.2 H.R.Ranganath was present in the suit schedule property. When the Ameenass of the Court have informed the Judgment Debtor No.2 regarding executing the delivery warrant and at that time the Judgment Debtor No.2 asked them to sit for a while and he went away from the shop. When the said Ameenass were sitting at the shop, one Srinivas came to the suit schedule property and directed the Ameenass to go out as they have no intention to vacate the suit schedule property. Further mentioned in the report of the Ameenass that the said Srinivas and the Judgment Debtor No.2 have locked the suit schedule property and the Ameenass waited till 5.00 p.m. but the said Srinivas and the Judgment Debtor No.2 did not turned up, hence they have requested to the Court order for break open the lock. After the submitting said report by the Ameena, the application i.e., I.A No.5 was filed.

21. The Court Ameenass in their report have not stated that the present Appellant/Objector is in actual possession and enjoyment over the suit schedule property and also she is running the Home Appliances business in the suit schedule property. Per contra, they have stated that the Judgment Debtor No.2 is in possession of the suit schedule property. The said Srinivas mentioned in the report of the Ameena is the son of the present Appellant who had adduced evidence as DW7 in



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O.S.No.40/2006, wherein he has stated in his cross examination that if his mother in O.S.No.12/2009 succeeds to establish her right, then she is entitle for suitable reliefs in O.S.No.12/2009. After considering the materials on record, this Court is of the considered opinion that the present Appellant/Objector has not at all produced the materials to show that she is in actual possession and enjoyment over the suit schedule property in order to adjudicate her claim as sought for under I.A No.5.

22. It is well established principle of law that any one coowner can file a suit for recovery of possession against the tenants and the other co-owners can enjoy the benefit of the said order if in the partition, if the said property is allotted to the some others shares. In the case on hand, as per the present Appellant, she has filed O.s.No.12/2009 and the same is pending before the Senior Civil Judge & JMFC., KGF. If the present Decree Holder succeeds to obtain the possession of the suit schedule property from the tenants, i.e., the Judgment Debtors and if the suit filed by the present Appellant came to be decreed and in such an event, if the present suit schedule property is fallen to the share of the Appellant, then she can obtain the possession of the same without any hindrance of the Judgment Debtors. After considering the materials on record, it appears to this Court that the present



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Appellant/Objector is dancing to the tunes of the Judgment Debtors and filed the application I.A No.5 before the Trial Court to see that the delivery warrant cannot be executed. By considering the said conduct of the present Appellant/Objector it appears to this Court that she is abusing the process of Court and to see that the Decree Holder cannot enjoy the fruits of the decree.

23. Now the question before this Court is, Whether the Learned Trial Court is right in dismissing the application i.e., I.A No.5 without affording an opportunity to the Appellant/Objector to lead evidence in support of the application?. When the present Appellant/Objector had already filed I.A.No.13 in O.S.No.40/2006 as impleading herself as necessary party and the Trial Court had already rejected the said application and the Hon'ble High Court of Karnataka has upheld the said order, then this Court is of the opinion that the Trial Court is right in dismissing the application i.e., I.A No.5 by considering the tactics of the Appellants/Objectors and Judgment Debtors. If the present Appellant/Objector is allowed to lead evidence before the Trial Court on the application filed U/Order 21 Rule 97, then it will take number of years and the fruits of the decree passed by the Hon'ble High Court of Karnataka in RSA will not come to the aid of the Decree Holder to enjoy the same. When it appears to the Court that the Appellant/Obstructor is abusing



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the process of Court, then she cannot be permitted to lead evidence in support of the application.

24. The Learned Counsel for the Appellant/Objector has relied upon the ratio laid down by the Hon'ble Apex Court of India which is reported in AIR 1998 SC 1754 in between Silver Line Forum Private Limited Vs. Rajiv Trust and another, AIR 1995 SC 358 in between Bhanwarlal Vs. Satyanarayana and another, AIR 2002 SC 3083 in between Tanzeem-E-Sufia Vs. Bibi Haliman and others, AIR 1996 SC 2050 in between Babu Lal Vs. Rajkuamr and others, AIR 1997 SC 856 in between Brahmdeo Choudhary Vs. Rishikesh Prasad Jaiswal and another, AIR 2003 SC 3524 in between H.Seshadri Vs. K.R.Natarajan and another and AIR 1992 Calcutta 219 in between Dilip Nag Vs. Smt.Lilabati Garai.

25. The Learned Counsel for the Appellant/Objector by relying upon the ratio laid down in the above said cases has vehemently argued before the Court that when the execution petition is resisted by the third party, the objections and rights of such third person has to be adjudicated by executing Court. This Court has carefully perused the ratio laid by the Hon'ble Apex Court of India and the Hon'ble High Court of Calcutta. When the present Appellant/Objector had already filed I.A.No.13 U/Order 1 Rule 10 of CPC in O.S.No.40/2006 to implead herself as party to the suit and when the said application came to be



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rejected and the order passed by the Trial Court on I.A.No.13 in O.S.No.40/2006 was already upheld by the Hon'ble High Court of Karnataka in Writ petition, then this Court is of the opinion that the claim of the Appellant/Objector cannot be adjudicated. When the Appellant/Objector has already filed O.S.No.12/2009, then her remedy is before that Court and not before the executing Court. Hence this Court is of the opinion that the ratio relied upon by the Learned Counsel for the Appellant/Objector doesn't come to her aid.

26. The Learned Counsel for the Decree Holder has relied upon the ratio laid down by the Hon'ble High Court of Karnataka which is reported in AIR 1987 Karnataka 75 in between Jesaraj Ghasimal Betal Vs. Ahammad Hussein, ILR 2014 Karnataka 4366 in between Mrs.Jacintha Swetha D'Souza and others Vs. Mrs.Lousia D'Souza and others, 2002 (2) KCCR 1196 in between Abudl Sattar and others Vs. Gurulingayya and others, the ratio laid down by the High Court of Rajasthan which is reported in AIR 1991 Rajasthan 136 in between Sri.Jai Prakash Vs. Khimraj and another.

27. This Court has carefully perused the ratio laid down in the above said cases. By applying the ratio laid down in the above said cases, this Court is of the opinion that in order to file application U/Order 21 Rule 97, then the application has to be filed only by



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the Decree Holder and the purchaser and not by the stranger. In the case on hand, the present Appellant/Objector has the knowledge about O.S.No.40/2006 and also obtaining the Judgment and Decree by her brother i.e., the Decree Holder and confirming the same by the Hon'ble High Court of Karnataka in the said RSA. But after exhausting all remedies, now she has filed the frivolous application before the Learned Trial Court and Learned Trial Court vide its considered order has rightly rejected the application filed by the Appellant.

28. It is relevant to refer the ratio laid down by the Hon'ble High Court of Karnataka which is reported in ILR 2006 Kar 2696 = AIR 2006 Kar 271 in between A.M.Subbamma V/s A.V.Kushalappa and Others, wherein the Hon'ble High Court has held as under

*CODE OF CIVIL PROCEDURE – ORDER 21
RULE 97 – Objector application filed – Ended
in compromise – partition between parties –
Objector filing a suit for partition and
separate possession of her share in respect of
the family properties – Whether objector can
maintain an application under Order 21 Rule
97 – Relief sought in the suit and Order 21
Rule 97 application one and same – HELD –
The Appellant having come to know that such
a compromise decree, she has filed a
separate suit which suit is pending decision.*



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The relief sought in the suit tiled by her and the contentions in the application filed under Order 21 Rule 97 of CPC are similar. When the relief in the suit as well as in the application are one and the same, Appellant cannot be permitted to pursue her remedy in two different proceedings. When she has availed the remedy of filing a suit, this court is of the opinion that on the same set of facts Appellant cannot maintain an application under Order 21 Rule 97 of CPC. Though the Appellant has filed an application under Order 21 Rule 97 of CPC, said application has to be tried as an 30 R.A.52/2016 independent suit. When she has already instituted a suit for the same relief, Petitioner cannot maintain an application under Order 21 Rule 97 of CPC subsequently.

This court has carefully perused the ratio laid down in the above said case and applied the same to the facts on hand. In the case on hand also the present Appellant/Objector has already instituted O.S No.12/2009 for partition and separate possession in respect of family properties, wherein the present suit schedule property is one of the suit schedule property. The relief sought for by the Appellant in O.S No.12/2009 and in I.A No.5 in the Execution petition are one and the same. As per the ratio laid down by the Hon'ble High Court of Karnatka in the above said case, this court is of the opinion that



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when the relief in the suit as well as in the application are one and the same, Appellant/Objector cannot be permitted to pursue her remedy in two different proceedings. When she has availed the remedy of filing a suit, this court is of the opinion that on the same set of facts Appellant/Objector cannot maintain an application under Order 21 Rule 97 of CPC. The ratio laid down by the Hon'ble High Court of Karnataka is aptly applicable to the facts on hand. By applying aforesaid ratio laid down by the Hon'ble High Court of Karnataka to the facts on hand, this court is of the opinion that the I.A No.5 filed by the Appellant/Objector is not maintainable and the learned Trial court has rightly rejected the said application. It appears to this court that the present Appellant/Objector at the instance of the Judgment Debtors is abusing the process of court as well as law by way of filing these types of frivolous application since the original suit was pending till the execution petition. Hence the exemplary cost has to be imposed on Appellant/Objector and accordingly exemplary cost of Rs.3,000/- is imposed on Appellant/Objector for abusing the process of court as well as law."

14. Pertinently, First Appellate Court also noted that the very same applicant has filed a suit for general partition in respect of the properties left behind by Sri T.R.Srinivasasetty.



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15. Present Second Appeal came to be admitted by the co-ordinate Bench of this Court by Order dated 21.03.2019 on the following substantial questions of law.

"(i) Whether Courts below were right in rejecting the application of the appellant under Order XXI Rule 97 CPC without holding an enquiry as contemplated Order XXI Rule 101 CPC?

(ii) Whether Courts below were right in holding that the rejection of the application of the appellant to implead her in O.S.No.40/2006 operates as res judicata in deciding her application under Order XXI Rule 97 CPC?"

16. Sri Premnath, learned counsel for the appellant/objector reiterating the grounds urged in the appeal memorandum contended that, whenever an application under Order XXI Rule 97 and 101 r/w 151 of the Code of Civil Procedure is filed, it is the mandatory requirement to hold an enquiry and permit the parties to lead evidence so as to substantiate their claim.

17. It is his submission that without conducting such an enquiry, if the application is decided on merits, it would *per se* amount to illegality besides procedural irregularity and thus



sought for allowing the appeal by answering the first substantial question of law in favour of the appellant.

18. Sri Premnath, would also contend that rejection of the application of the appellant to implead her in O.S No.40/2006 operates as *res judicata* if the finding recorded by both the Courts is incorrect as the applicant has got a right under Order XXI Rule 97 of the Code of Civil procedure to object the decree.

19. Therefore, mere rejection of the application filed by the appellant under Order I Rule 10 of the Code of Civil Procedure cannot be a ground to reject the application under Order XXI Rule 97 of the Code of Civil Procedure and thus sought for answering the second substantial question of law in favour of the appellant and sought for allowing the appeal.

20. *Per contra*, Sri T.Srinivasan, learned counsel for the Decree Holder would support the impugned orders.

21. He would further contend that the order that has been passed rejecting the application filed by the appellant under Order I Rule 10 of the Code of Civil Procedure would bind the



parties *inter se* in all subsequent proceedings. In such circumstances the principle of “constructive *res judicata*” would be applicable and there is no explanation whatsoever forthcoming as to why the appellant did not challenge the order dismissing her application filed under Order I Rule 10 of the Code of Civil Procedure.

22. He would further contend that at least after the decree in O.S No.40/2006 is passed, the appellant should have taken steps to challenge the decree, as, a non-party can also file an appeal under Section 96 of the Code of Civil Procedure, if the party's rights are affected by the judgment and decree passed in a particular suit.

23. No such attempt is made by the appellant and therefore, the appellant cannot now urge that she has got independent right to object the decree passed by duly constituted Court.

24. Moreover, a separate suit filed by the appellant would be adjudicated on merits in respect of not only the property involved in the present appeal, but also in respect of other properties and appellant can always work out her remedy of



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equitable partition, if some right has been affected in respect of the present suit property. Therefore, sought for dismissal of the appeal.

25. He also points out that unless a party makes out an independent right to object for the decree, enquiry in respect of all such applications is not mandatory. Therefore the substantial questions of law will have to be answered against the appellant and sought for dismissal of the appeal.

26. Having heard the arguments of both sides, this Court perused the material on record meticulously.

27. On such perusal of the material on record, it is noted that appellant knew about pendency of the case in O.S No.40/2006 and she did made an attempt to file an application to implead herself as a party to the suit.

28. Learned Trial Judge rejected the said application. For the reasons best known to the appellant, the matter was left there itself without challenging the Order rejecting the application filed under Order I Rule 10 Code of Civil Procedure.



29. Therefore, appellant was aware of her right being curtailed and the order rejecting the application acted detrimental to her interest during pendency of the suit itself.

30. As rightly contented by the counsel for respondent, even after the disposal of the suit in O.S No.40/2006. Appellant had the right to file an appeal though she was not a party to the suit, as her rights were affected, which she came to know at the time of filing the application for impleading itself.

31. But, appellant for the reasons best known to her did not choose to challenge the judgment passed by the Trial Court.

32. Not only appellant, but other defendants as well left the matter there itself and it is only the second defendant who contested the judgment of the Trial Court by filing R.A No.35/2012.

33. Defendant No.2, having lost the case before the First Appellate Court, also filed a Second Appeal in RSA No.1187/2013, which also came to be dismissed by this Court.



34. In other words, right of the plaintiff to obtain the possession of the suit property was thus, confirmed by this Court in RSA No.1187/2013.

35. If at all the applicant is having interest in the suit property she should have challenged the judgment passed by the Trial Court or at least challenged the order rejecting the application seeking for impleadment.

36. Having failed to do so, having known about her rights being curtailed and the orders that would be passed would be detrimental to the interest of the appellant, keeping quiet and sleeping over her rights all these years and filing an application under Order XXI Rule 97 and 101 Code of Civil Procedure that too in the execution petition of the year 2013 and pursuing the matter upto year 2026 without there being semblance of any independent right, is nothing but abuse of process of law.

37. As such, first substantial question of law is answered against the appellant.



38. In the absence of any independent right being made out by the appellant, the argument that is put forward on behalf of the appellant that there is a procedural error in not holding the enquiry and thus the Appeal needs to be allowed cannot be countenanced in law.

39. It is needless to emphasize that an order suffered *inter se* by the parties would bind them in all subsequent proceedings and in the same proceedings as well, till it reaches finality.

40. Therefore, the second substantial question of law will have to be necessarily answered against the appellant.

41. In view of the foregoing discussion and answer of this Court to both the substantial questions of law in negative, following:

ORDER

(i) Appeal is meritless and hereby ***dismissed***.

**Sd/-
(V SRISHANANDA)
JUDGE**