



CNR: KAHC010346182018

NC: 2026:KHC:52519
CRP No. 67 of 2018
C/W WP No. 3499 of 2018

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

CIVIL REVISION PETITION NO.67 OF 2018

C/W

WRIT PETITION NO.3499 OF 2018 (GM-CPC)

IN CRP NO.67/2018

BETWEEN:

1. SRI.KRISHNE GOWDA
S/O SRI CHIKKAIAHPPA
AGED ABOUT 45 YEARS
R/AT ABALAWADI VILLAGE
KOPPA HOBLI
MADDUR TALUK
MANDYA DISTRICT - 571428
2. SRI.H.K.SHIVANNA
S/O LATE SRI.KEMPEGOWDA
AGED ABOUT 56 YEARS
R/AT HURUGALAWADI VILLAGE
KOPPA HOBLI, MADDUR TALUK
MANDYA DISTRICT – 571428

...PETITIONERS

(BY SRI.A.MADHUSUDHANA RAO, ADVOCATE)

AND:

1. SRI.LINGARAJU
S/O LINGEGOWDA @ BASIGOWDA

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MAJOR
R/O KOPPA VILLAGE AND POST
MADDUR TALUK
R/AT NO.86, C.V.ROAD
BANNIMANTAPPA
MYSORE - 570005

2. SMT.YASHODHAMMA
D/O LINGEGOWDA @ BASIGOWDA
W/O MARIGOWDA, MAJOR
R/AT KOPPAL HOBLI
MADDUR TALUK
MANDYA DISTRICT – 571428
3. SRI.NINGEGOWDA
S/O NINGEGOWDA @ HUDUGE GOWDA
MAJOR
R/AT ABALAWADI VILLAGE
KOPPA HOBLI
MADDUR TALUK
MANDYA DISTRICT - 571428
4. SRI.CHIKKATHAMMAIAH
S/O CHANNEGOWDA
MAJOR
R/AT BIDARAKOTE VILLAGE
KOPPA HOBLI, MADDUR TALUK
MANDYA DISTRICT - 571428
5. SMT.JAYALAKSHMI
W/O NAGARAJ,
AGED ABOUT 48 YEARS
R/AT 30/A, NAGENDRA BLOCK
BANASHANKARI I STAGE
BENGALURU – 560 078

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6. SMT.KALPANA
W/O SRI.K.S.CHOWDEGOWDA
AGED ABOUT 48 YEARS
R/AT KEELARA VILLAGE
KEREGODU HOBLI
MANDYA TALUK AND DISTRICT – 571428

...RESPONDENTS

(BY SRI. N.GOWTHAM RAGHUNATH, ADVOCATE FOR R.1;
NOTICES TO R.1 AND R.6 ARE SERVED AND UNREPRESENTED)

THIS CRP IS FILED UNDER SEC.115 OF CPC,1908 AGAINST
THE ORDER DATED 17.1.2018 PASSED ON IA NO.24 IN EX.CASE
NO.145/2009 ON THE FILE OF THE SENIOR CIVIL JUDGE, MADDUR,
ALLOWING THE IA FILED UNDER ORDER 151 OF CPC AND ETC.

IN WP NO.3499/2018

BETWEEN:

1. SRI.KRISHNE GOWDA
S/O SRI CHIKKAPPAIAH
AGED ABOUT 45 YEARS
R/AT ABALAWADI VILLAGE
KOPPA HOBLI, MADDUR TALUK
MANDYA DISTRICT – 571401
2. SRI.H.K.SHIVANNA
S/O LATE SRI.KEMPEGOWDA
AGED ABOUT 56 YEARS
R/AT HURUGALAWADI VILLAGE
KOPPA HOBLI, MADDUR TALUK
MANDYA DISTRICT – 571401

...PETITIONERS

(BY SRI. A.MADHUSUDHANA RAO, ADVOCATE)

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AND:

1. SRI.LINGARAJU
S/O LINGEGOWDA @ BASIGOWDA
MAJOR
R/AT NO.86, P B ROAD
BANNIMANTAPA, MYSORE
2. SMT.YASHODAMMA
D/O LINGEGOWDA @ BASIGOWDA
W/O MARIGOWDA, MAJOR
R/AT KOPPA HOBLI, MADDUR TALUK
MANDYA DISRICT - 571401
3. SRI NINGEGOWDA @
S/O LINGEGOWDA @ BASIGOWDA,
MAJOR,
R/AT ABALAWADI VILLAGE
KOPPA HOBLI, MADDUR TALUK
MANDYA DISRICT - 571401
4. SRI.CHIKKATHAMMAIAH
S/O SONNEGOWDA, MAJOR
R/AT BIDARAKATTE VILLAGE
KOPPA HOBLI, MADDUR TALUK
MANDYA DISTRICT – 571401
5. SMT.JAYALAKSHMI
W/O NAGARAJA
MAJOR
R/AT 30/8, NAGENDRA BLOCK
BANASHANKARI I STAGE
BANGALORE - 560072
6. SMT.KALPANA
W/O SRI.K.S.CHOWDEGOWDA
MAJOR
R/AT KEELARA VILLAGE

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KEREGODU HOBLI
MANDYA TALUK AND DISTRICT – 571401

...RESPONDENTS

(BY SRI.GOWTHAM RAGHUNATH, ADVOCATE FOR R.1;

NOTICE TO R.2 IS SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER FOUND AT ANNEXURE-E PASSED BY THE LEARNED SENIOR CIVIL JUDGE, MADDUR ON I.A.NO.18 IN EXECUTION CASE NO.145/2009 DATED 05-12-2017, ALLOW THIS WRIT PETITION AND ETC.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The captioned petition is filed by third-party applicants, who are aggrieved by the order passed by the learned Executing Court on I.A.No.18, filed under Section 47 of the Code of Civil Procedure, 1908, (for short 'CPC') seeking adjudication of their alleged right, title and interest in the subject property. The learned Executing Court, having noticed that the applicants claim their right and title through Judgment Debtor No.2, rejected the

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application filed under Section 47 of CPC and, consequently, closed the execution proceedings. Aggrieved by the said order, the applicants have preferred C.R.P.No.67/2018. Thus, both the orders are assailed in the present proceedings.

2. Since C.R.P.No.67/2018 arises out of the very same proceedings and is connected with W.P.No.34991/2018, both the matters have been taken up together and are being disposed of by this common order.

3. Learned counsel appearing for the petitioners, reiterating the grounds urged in the petitions, would vehemently contend that the property purchased by the petitioners did not form part of the subject matter of the preliminary decree and was brought within the fold of the proceedings only at the stage of drawing up the final decree. It is, therefore, contended that the petitioners' independent rights in respect of the said property are substantially affected by the final decree proceedings.

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Learned counsel would further contend that, in the light of the said assertion, the Executing Court was required to examine the petitioners' claim and adjudicate their right under Section 47 of CPC, instead of rejecting the application at the threshold.

4. Though this Court finds some substance in the submission made by learned counsel appearing for the petitioners, the question that arises for consideration is whether such a case was, in fact, pleaded before the Executing Court. On a careful examination of the averments contained in the affidavit filed in support of the application under Section 47 of CPC, this Court finds that the grounds now urged before this Court, as well as the submissions advanced by learned counsel for the petitioners, do not find a corresponding foundation in the pleadings before the Executing Court. The specific contention that the property purchased by the petitioners was not the subject matter of the preliminary decree and

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was brought into the proceedings only at the stage of drawing up the final decree is conspicuously absent in the affidavit filed in support of the application under Section 47 of CPC. In the absence of such foundational pleadings, the petitioners cannot be permitted to enlarge the scope of the proceedings at this stage by advancing grounds which were not pleaded before the Executing Court. It would, therefore, be apposite to extract the relevant unnumbered paragraphs of the affidavit filed in support of the application under Section 47 of the CPC, which read as under:

"I, H.K.Shivanna, the 2nd Applicant herein for myself and on behalf of 1st application do hereby solemnly state on oath as follows:

Decree Holder was working elsewhere and not in the village. On 13-12-1982 father of Decree Holder together with his daughter and son-in-law i.e., Judgment Debtor No.2 and her husband being the Manager of Joint Family for legal necessity sold 2nd item of suit property in favour of Judgment Debtor No.4 by registered sale deed for valuable consideration and put him in actual possession and enjoyment of the same. Khata and RTC changed to his name. 4th JDr orally and customarily gifted the 2nd item or alternately he allotted

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2nd item to his sister Sonnamma and put her in possession thereof. So 4th JDr by consent get changed the Khata and RTC of 2nd item of suit land in favour of his sister Smt.Sonnamma. Though M.R.No.51/1998-94 and as such Khata and RTC changed to her name. After the death of Sonnamma her only son the 2nd applicant become the owner in possession of 2nd item of suit land. M.R.No.86/2007-08 was effected and Khata and RTC changed to and stands in my name. My mother has raised the loan from Vijay Bank, Koppa and VSSNB, Koppa.

Matter of Decree Holder settled and gifted some properties in favour of his daughter the 2nd JDr. 2nd JDr and her husband for their legal necessity sold 3rd item of suit land in favour of one Puttaswamy and Jayaramu by registered sale deed on 14-11-1988 and put them in possession thereof. Later they sold it by registered sale deed on 29-5-2001 in favour of 1st applicant. Thus, Khata and RTC changed to and stands in the name of 1st Applicant and he is the owner in possession of 3rd item of suit land. Thus, applicants are bonafide purchasers for valuable consideration. Sale is for legal necessities. Even now applicants are in actual and peaceful possession and enjoyment of the suit items 2 and 3. Khata and RTC stands in their respective names.

Decree holder has got knowledge of khata and RTC stands in the name of purchasers. It seems Decree Holder has filed suit for partition and got the decree. In that suit applicants are not parties. Under the circumstances decree holder without impleading the applicants as parties, cannot seek the delivery warrant in respect of suit items 2 and 3. Accordingly, the right, title, interest and possession of applicants over suit items 2 and 3 and delivery of those properties has to be adjudicated. Otherwise we will be put to

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much hardship, and injustice will be caused to us. Because without providing an opportunity of being heard the properties cannot be diverted from us.

Hence, I pray this Hon'ble Court be pleased to allow this Interlocutory Application and to conduct an enquiry to adjudicate our rights over suit items 2 and 3."

5. On a careful reading of the averments extracted supra from the affidavit filed in support of the application under Section 47 of CPC, it is evident that the present applicants trace their title to the subject property through Puttaswamy and Jayaramu. According to the applicants, Judgment Debtor No.2 and her husband, on the ground of legal necessity, conveyed Item No.3 in favour of Puttaswamy and Jayaramu under a registered Sale Deed dated 14.11.1988 and delivered possession thereof to the purchasers. It is further contended that Puttaswamy and Jayaramu, in turn, conveyed the said property in favour of Applicant No.1 under a registered Sale Deed dated 29.05.2001. Thus, the applicants themselves trace their alleged right and title to Judgment Debtor No.2 through the aforesaid chain of conveyances.

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6. It is well settled that a third-party claimant invoking Section 47 of CPC., is required to establish an independent right, title or interest in the property in question warranting adjudication in the execution proceedings. In the present case, the applicants admittedly trace their title through Judgment Debtor No.2, who is stated to have conveyed the property on the ground of legal necessity in favour of Puttaswamy and Jayaramu, who thereafter conveyed the same in favour of Applicant No.1. In such circumstances, the contention now sought to be urged before this Court, namely, that the property purchased by the applicants was not the subject matter of the preliminary decree and came to be included only at the stage of drawing up the final decree, cannot be examined in the absence of any foundational pleading to that effect in the affidavit filed in support of the application under Section 47 of CPC., The applicants cannot be permitted to introduce a new factual foundation at the revisional/writ stage which was neither pleaded nor urged



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before the Executing Court. The Executing Court, therefore, was justified in rejecting the application filed under Section 47 of CPC. Consequently, the order closing the execution proceedings also does not warrant interference.

7. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

- (i) C.R.P.No.67/2018 and W.P.No.34991/2018 stand dismissed.
- (ii) However, it is made clear that dismissal of these petitions shall not preclude the petitioners/ applicants from assailing the final decree, insofar as it relates to inclusion of the properties claimed to have been purchased by them, in accordance with law and before the appropriate forum subject to law of Limitation.

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(SACHIN SHANKAR MAGADUM)
JUDGE