IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

REGULAR FIRST APPEAL NO. 1445 OF 2019

BETWEEN:

SRI S SOUNDARARAJAN
S/O LATE K SUBRAMANI
AGED ABOUT 54 YEARS
R/AT NO.S-113
MAYA INDRAPRASTA
SOUTH TOWER
11TH FLOOR, J.P NAGAR
6TH PHASE, BANGALORE-560 078

...APPELLANT

(BY SRI. RAVISHANKAR S AND
SRI. DAYANANDA, ADVOCATES)

AND:

1. SMT LATHAMMA
D/O LATE K MALLAPPA
AGED ABOUT 53 YEARS

Digitally signed by PANKAJA S
Location: HIGH COURT OF KARNATAKA

2. SRI RAJU REDDY
S/O LATE K MALLAPPA
AGED ABOUT 50 YEARS

3. SRI RADHAKRISHNA
S/O LATE K MALLAPPA
AGED ABOUT 44 YEARS

4. SMT ASHWATHAMMA
D/O LATE K MALLAPPA
AGED ABOUT 43 YEARS

5. SMT NEELAMMA
D/O LATE K MALLAPPA
AGED ABOUT 42 YEARS

6. SMT LAKSHMAMMA
W/O LATE K MALLAPPA
AGED ABOUT 58 YEARS

7. SRI UMASHANKAR
S/O LATE K MALLAPPA
AGED ABOUT 45 YEARS

8. SRI VENKATESH
S/O LATE K MALLAPPA
AGED ABOUT 44 YEARS

ALL ARE RESIDING AT C/O NO.30
N.G NARAYANA LAYOUT
LALBAGH MAIN ROAD
BANGALORE-560 027

REP. BY THEIR P.A HOLDER
SRI. P.S DAYANANDA
S/O LATE P SHIVARAM
R/AT NO.30
N.G NARAYANA LAYOUT
LALBAGH MAIN ROAD
BANGALORE-560 027

9. SRI. K. RAMU
S/O LATE KARIYAPPA
AGED ABOUT 72 YEARS
R/AT NO.126 (OLD NO.95/1)
CWC ROAD, VIJINAPURA
DOORAVANINAGARA
BANGALORE-560 016

…RESPONDENTS

(BY SRI. V. VISHWANATH SHETTY, ADVOCATE FOR R9
VIDE ORDER DATED 17.11.2023, NOTICE TO R1-R8 IS DISPENSED WITH)

THIS RFA IS FILED UNDER SEC.96 OF CPC., 1908 AGAINST THE ORDER DATED 26.04.2019 PASSED IN EX.NO. 2991/2014 ON THE FILE OF THE XXX ADDITIONAL CITY CIVIL

AND SESSIONS JUDGE, BENGALURU, CITY, ALLOWING THE IA FILED UNDER ORDER XXI RULE 97 R/W SEC.151 OF CPC.,

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT ON 08.10.2026 COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

CAV JUDGMENT

This Regular First Appeal is filed by the appellant-decree holder challenging the order dated 26.04.2019 passed in Execution Case No.2991 of 2014 by the XXX Additional City Civil and Sessions Judge, Bengaluru City (CCH-31)(for short, "the Executing Court"), whereby the Executing Court allowed the application filed under Order XXI Rule 97 read with Section 151 of the Code of Civil Procedure (for short, "CPC") by the objector-respondent No.9.

2. For the sake of convenience, the parties are referred to as per their ranking before the Executing Court. The appellant is the plaintiff - Decree Holder, respondent Nos.1 to 8 are the defendants - Judgment Debtors and respondent No.9 is the objector before the Executing Court.

3. The abridged facts of the case, necessary for the disposal of this appeal are that the Decree Holder instituted Execution Case No.2991 of 2014 seeking to execute a compromise decree dated 27.10.2014 passed in O.S. No. 5494 of 2014. The said original suit had been filed by the Decree Holder for specific performance of a contract against Judgment Debtors Nos. 1 to 8, based on an agreement of sale dated 29.04.2011 said to have been executed through their general power of attorney holder, P.S. Dayanand. During the execution proceedings, respondent No. 9 filed an application as an objector under Order XXI Rule 97 read with Section 151 of CPC, offering resistance against the delivery of possession of the schedule property, contending that the decree was collusive and that he is in absolute possession based on an independent right and a Release Deed dated 09.09.1974 executed by family members of his elder brother K. Mallappa.

4. The Executing Court, after conducting an inquiry, allowed the objector's application, declared the compromise decree and the Court-executed Sale Deed as null and void, and dismissed the Execution petition. Aggrieved by the said order, the Decree Holder has preferred this appeal.

5. Heard the learned counsel Sri. -- for the appellant - Decree Holder and the learned counsel Sri -- for respondents.

6. The primary contention of the learned Counsel for the appellant is that the Executing Court grossly erred while allowing the application under Order XXI Rule 97 r/w section 151 of CPC filed by the objector – respondent No.9 by exceeding its jurisdiction beyond the decree. The decree is for specific performance and the Judgment Debtors have not challenged the same and when it has attained finality and the objector claiming right over the suit schedule property through the judgment debtors without any independent right, the executing Court ought not have held that, the Decree Holder has not proved the Agreement of Sale and the same is executed in collusion with the decree holder and the judgment debtors and thereby declaring nullity of the Sale Deed dated 27.03.2015 executed in favour of the Decree Holder.

7. Learned Counsel further contended that, the executing Court wrongly framed the question for consideration that, "*Whether the objector has established that the decree obtained in O.S No.5494/2014 dated 27.10.2014 is collusive decree and the objector has established his possession in the*

suit schedule property?". These questions cannot be decided by the Executing Court under Order XXI Rule 97 of CPC and can only be decided under Section 47 of CPC. According to the learned counsel, under the said Order, the only issue can be looked into by the Executing Court is whether the objector is in possession of the property and whether he is claiming independent title to the schedule property other than the judgment debtors.

8. He further contended that, the executing Court cannot sit as an Appellate Court and entertain any of the allegations of the objector with regard to the execution of GPA, Sale Agreement, compromise petition and passing of decree thereof. He also contended that, the Executing Court exceeded its jurisdiction holding that, Ex.O-31 to O-34 which are the proceedings of the suit under execution, makes it clear that, decree holder in collusion with judgment debtors and their GPA holder have filed a collusive suit and obtained collusive and fraudulent decree behind the back of objector as if the Executing Court sitting as an appellate Court and gave the findings that the document relied upon in the suit before passing the decree are not proved.

9. According to the learned counsel, the judgment debtors have not challenged the decree and the objector has not claimed any independent right over the suit schedule property and according to him, the original owner K. Mallappa who is brother of the objector and who is also the father/husband of the Judgment Debtors, allegedly executed a release deed in favour of the objector in the year 1974, which was is not placed on record in the execution proceedings. In such circumstance the objector has not claiming any independent right over the property. In such circumstance, the application filed under Order XXI Rule 97 r/w section 151 of CPC by the objector has to be dealt in accordance with Order XXI Rule 97 of CPC and cannot delve into the questions arising between the parties to the suit in which the decree was passed as provided under Section 47 of CPC.

10. By placing reliance on the application filed by him under Order XVI Rule 27 of CPC, he submits that, the documents placed along with the application i.e. the confirmation Deed dated 16.06.2015 clarifies that, the children of late Mallappa i.e. Judgment Debtor Nos.1, 2 and 4 executed the said confirmation deed in favour of the Decree Holder in addition to the Agreement of Sale executed by all the judgment

debtors through their GPA holder Dayanand. In such circumstance, the objector cannot claim that, the Decree Holder and the GPA holder of the judgment debtors have filed collusive suit after executing a forged sale agreement and by obtaining a collusive fraudulent decree and the Court's Sale Deed. With these submissions, he prays to allow the appeal by setting aside the impugned order.

11. To buttress his argument, he relied on the following:

1. ***MUNISWAMY AND OTHERS VS. VENGADACHALAM AND OTHERS*** reported in **(2011) 0 Supreme(Mad) 92**
2. ***CHALLANI GINNING AND PRESSING FACTORY VS. KAMAL*** reported in **2026 INSC 426**
3. ***NOORUDDIN VS. DR. K.L. ANAND*** reported in **(1995) 1 SCC 242**
4. ***USHA SINHA VS. DINA RAM AND OTHERS*** reported in **AIR 2008 Supreme Court 1997**
5. ***SILVERLINE FORUM PVT. LTD., VS RAJIV TRUST AND ANR*** reported in **(1998) 3 SCC 723**
6. ***SMT. NAGAVVA VS SRI MOULASAB AND ANR*** disposed by High Court of Karnataka, Dharwad Bench in WP No.110777/2017.

12. *Per contra*, the learned counsel for the objector/respondent No.9 supported the impugned order and contended that the Executing Court had full competence under Order XXI Rule 101 of the CPC to determine all questions relating to right, title, or interest. He submitted that the compromise decree was collusive, obtained behind his back despite his settled possession dating back from 1974 and the registered release Deed dated 06.02.2013 executed by judgment debtors No. 1, 7, and 8. He pointed out that PW.1 admitted in cross-examination that a permanent residential structure exists on the suit property and that the objector has been in long-standing possession. Accordingly, he prayed for dismissal of the appeal.

13. Having heard the learned counsel for the parties, the points arising for our consideration are:

i. Whether the Execution Court erred in passing the impugned order beyond the scope of Order XXI Rule 97 r/w section 151 of CPC?

ii. Whether the Execution Court is justified in holding that, the decree passed in O.S No.5494/2014 is a collusive and fraudulent decree, is not capable of being executed and thereby declaring that the

objector is in settled possession of the schedule property and entitled to remain in possession since the decree is not binding on him?

iii. Whether the impugned order suffers from any perversity or illegality, which calls for interference?

14. Before delving into the first question of law, it is appropriate to examine Order XXI Rule 97 and 101 of CPC, which read as under:

*"**Order XXI Rule 97**: Resistance or obstruction to possession of immovable property.—(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction...*

***Order XXI Rule 101**: Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose the Court shall, inter alia,*

shall have to jurisdictional competence to determine all such questions..."

15. By careful reading of the above provisions, it is clear that if an application is filed under Order XXI Rule 97 of CPC, it has to be dealt with in accordance with Rule 101. Further, Rule 101 empowers the Court to determine all questions including questions relating to right, title, or interest in the property arising between the parties to proceedings on an application under Order XXI Rule 97 or Rule 99 of CPC. In the instant case, the application is filed under Order XXI Rule 97 of CPC; as such, the Executing Court is empowered to examine questions relating to right, title, or interest in the property on the application. In such circumstances, the contention of the learned counsel for the appellant/decree holder that the Court cannot go beyond the decree and determine questions in relation to right, title, or interest and that the same can only be determined under Section 47 of CPC does not hold much water.

16. Moreover, in the instant case, the respondent/objector is not claiming right under the judgment debtors alone and he claims independent right as a joint family member with late K. Mallappa being his brother. Ex.O-2 is the

release Deed executed by the wife and two children of late K. Mallappa i.e., Judgment Debtor Nos.1, 7, and 8. The same reveals that the schedule property in the petition is the joint family property acquired in the name of K. Mallappa and that the judgment debtors and the objector were residing in the schedule property before and after the demise of late K. Mallappa and they released their right in the same to the objector in 2013. The relationship between K. Mallappa and the objector is not in dispute. It is also not in dispute that the Judgment Debtors are the wife and children of late K. Mallappa. In such circumstances, the finding of the Executing Court is right in exercising its power under Order XXI Rule 97 CPC. Accordingly, the first question of law is answered in favour of the respondent/objector.

17. As far as the second question of law is concerned, as discussed supra, K. Mallappa and the objector are brothers, and K. Mallappa acquired the schedule property on 06.07.1966, which is not in dispute. He handed over possession of the property to the objector on 09.09.1974 by an unregistered possession deed. Thereafter, in the year 1990, the objector constructed a residential house on the schedule property. Ex.O5 reveals that the objector paid tax in respect of the

schedule property way back in the year 1979. Further, the ration card produced at Ex.O-20 reveals that the objector is residing in the schedule property and obtained the ration card on 24.12.2010. Ex.O-2 is the release deed executed by the wife and two children of late Mallappa i.e., judgment debtor Nos.1, 7, and 8, revealing that the schedule property is the joint family property acquired in the name of Mallappa and that the judgment debtors and the objector were residing in the suit schedule property before and after the demise of late Mallappa and released their right to the objector. Ever since then, the objector has been in possession of the property, and encumbrance certificates, tax-paid receipts, electricity bills, ration cards, Aadhar cards, and election I.D cards i.e., Ex.O3 to O29 clearly reveal that the objector is in possession of the schedule property. Additionally, photographs placed at Ex.O-35 further clarify that an old residential house exists on the schedule property.

18. Admittedly, the original suit was filed on 18.07.2014 by the Decree Holder for specific performance of a contract dated 29.04.2011 in respect of the schedule property, alleging that the GPA holder of the Judgment Debtors, P.S. Dayanand, executed the agreement of sale. Admittedly, the

original GPA has not been produced before the Trial Court by the GPA holder. Subsequently, without serving any suit summons to the judgment debtors, the alleged GPA holder represented them and entered into a compromise with the Decree Holder, thereby obtaining a compromise decree. The application filed by the Decree Holder in O.S. No. 5494 of 2014 i.e., Ex.O-31 reveals that the GPA holder conceded that the Khatha has not been transferred in the name of the Judgment Debtors; as such, they could not execute the sale deed, however, they were willing and ready to execute the sale deed, and thereafter the sale deed was executed through the Court. On perusal of the manner in which the suit was filed by the Decree Holder and the appearance of the alleged GPA holder of the Judgment Debtors and subsequent compromise petition coupled with admissions in the evidence of PW.1 in cross-examination, it is unequivocally established that the judgment and decree obtained by the Decree Holder is a collusive one by playing fraud on the objector as well as the Trial Court.

19. No doubt, the decree holder has filed an application under Order XLI Rule 27 r/w Section 151 of CPC by producing the confirmation Deed dated 16.06.2015 executed by Judgment Debtor Nos.1, 2, and 4. However, the said confirmation Deed

was executed after institution of the suit i.e., on 18.07.2014 and also after execution of the release Deed in favour of the objector i.e., on 06.02.2013. In such circumstances, it can easily be gathered that after execution of the collusive agreement between the Decree Holder and the GPA holder of the Judgment Debtors, at their instance a subsequent confirmation Deed might have been executed. There are no valid reasons forthcoming for the non-production of the said document and failure to lead evidence by the Decree Holder in the execution case. As such, the same cannot be considered at this stage. It is a settled position of law that 'fraud' is an act of deliberate deception with the design of securing something by taking unfair advantage of another, where one gains at the loss and cost of another. The instant case is one of such kind. Accordingly, the second question of law is answered in the affirmative.

20. In view of my answers to point Nos.1 and 2 in favour of the objector, I am of the view that there is no perversity or illegality in the impugned order passed by the executing Court. Consequently, while recording the strongest disapproval of the Decree Holder's conduct, this Court deems it equitable to depart from the general rule of ordering cost.

21. Accordingly, the appeal being devoid of merits is ***dismissed***.

SD/-
(RAJESH RAI K)
JUDGE

PKS/K