



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE S.G.PANDIT

WRIT PETITION NO. 26622 OF 2023 (GM-CPC)

BETWEEN:

1. MR. VEERENDRA,
S/O LATE P.K.GUNAPAL AND
LATE SMT. RATHNAMMA,
AGED ABOUT 52 YEARS,
2. MR. VIVEK,
S/O LATE P.K.GUNAPAL AND
LATE SMT. RATHNAMMA,
AGED ABOUT 45 YEARS,
3. SMT. VINODA,
D/O LATE P.K.GUNAPAL AND
LATE SMT.RATHNAMMA,
AGED ABOUT 43 YEARS,
4. MR. MAHAVEERA,
S/O JEEVANDHARA AND LATE VIDYA,
AGED ABOUT 32 YEARS,
5. KUMARI. PRAGATHI,
D/O JEEVANDHARA AND LATE VIDYA,
AGED ABOUT 25 YEARS,
6. SMT. RATHNAPRABHA,
W/O VINAY,
AGED ABOUT 52 YEARS,

Digitally signed
by SUCHITRA
MJ
Location: HIGH
COURT OF
KARNATAKA





7. KUMARI. PALLAVI,
S/O NEMAYYA HEGDE,
AGED ABOUT 25 YEARS,
ALL ARE R/AT RATHNA NILAYA,
NELDIGUDDE, MARPADY VILLAGE,
GANDHINAGAR,
P.O, MOOBBIDRI – 574 227,
D.K.

...PETITIONERS

(BY SRI. M SUDHAKAR PAI., ADVOCATE)

AND:

MR. SHANTHIRAJA HEGDE,
S/O NEMAYYA HEGDE,
AGED ABOUT 73 YEARS,
R/AT NELDIGUDDE,
MARPADY VILLAGE, GANDHINAGAR P.O.
MOOBBIDRI – 574 227, D.K.

...RESPONDENT

(BY SRI.P.P.HEGDE, SENIOR ADVOCATE FOR
SMT.RACHITHA RAJASHEKAR, ADVOCATE FOR
M/S.P.P.HEGDE ASSTS., ADVOCATES)

THIS WP IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO a) QUASH THE ORDER
DATED 04/10/2023, EX.CASE NO.9/2019 ON THE FILE OF
CIVIL JUDGE AND JMFC, MOODABIDRI, WHICH ORDER IS
CONTAINED IN THE CERTIFIED COPY OF THE ORDER SHEET OF
EX. CASE NO.9/2019, VIDE ANNEXURE-L TO THE WP AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY
HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

Heard Sri. M.Sudhakar Pai, learned counsel for the petitioners-decree holders and Sri. P.P.Hegde, learned Senior Counsel for Smt. Rachitha Rajshekar, learned counsel for the respondent-judgment debtor. Perused the writ petition papers.

2. Learned counsel Sri. M.Sudhakar Pai would submit that the petitioners are before this Court, aggrieved by order dated 04.10.2023 in Ex.Case No.9/2019 on the file of the Civil Judge and JMFC, Moodabidri, by which the Executing Court posted the execution petition for enquiry. Learned counsel further submits that the suit of the petitioners-decree holders was for possession and the said suit was decreed directing the defendant i.e., respondent herein to hand over the vacant possession of plaint 'A' schedule premises and to pay mesne profit of Rs.3,000/- per month till handing over the vacant possession of plaint 'A' schedule premises. Learned counsel would further submit that plaint 'A' schedule



premises is Door Nos.3-221 and 3-221(A) of Moodbidri Town Municipality, measuring about 600 Sq. feet area and situated in S.No.304/2B of Marpady Village of Mangalore Taluk, D.K. District.

3. Learned counsel for the petitioners further submits that the respondent-judgment debtor on appearance, filed his objection on 26.05.2023. Thereafter, the execution petition was adjourned from time to time and under impugned order, the Executing Court without any reason or without assigning any reason observed that before passing delivery warrant order, it is necessary to post for enquiry. Learned counsel would further contend that the Executing Court committed grave error in passing such order. He would submit that the question of enquiry in a decree for possession would not arise. Further, it is submitted that if the decree is put into execution within two years, the Executing Court to issue notice in terms of Rule 22 of Order 21 of CPC. Learned counsel further submits that when Rule 35 of Order 21 of CPC would not



contemplate any enquiry, there is no basis for the Executing Court for posting the Execution Petition for an enquiry. Thus, learned counsel would submit that the order of the Executing Court is opposed to the provisions of Order 21 Rule 35 of CPC. Thus, he prays for allowing the writ petition.

4. Learned Senior Counsel Sri. P.P.Hegde for the respondent-judgment debtor would support the order passed by the Executing Court and would submit that the petitioners-decree holders have not described the property properly. Further, he submits that house in occupation of judgment debtor consists of more than 2000 sq.ft and it is not identifiable to which portion, the petitioners-decree holders property would fall i.e., 600 sq.ft. Thus, learned Senior Counsel would submit that to find out the property or to identify the property of the decree holders, the Executing Court has rightly posted for enquiry.

5. The decree put into execution is a decree for possession directing the defendant i.e., respondent herein



to hand over the vacant possession of plaint 'A' schedule premises in terms of decree, which reads as follows:

"Tiled residential premises bearing Door No.3-221 and 3-221(A) of Moodbiri Town Municipality and measuring about 600 sq. feet area and situated in S.No.304/2B of Marpady Village of Mangalore Taluk, D.K. District."

6. On appearance, the respondent-Judgment Debtor filed objections on 26.05.2023 and at Paragraph No.3, raised the following objection:

"3. Without prejudice to the contentions taken by the Judgement Debtor in the suit in O. S. No. 163/2013 and RA No.143/2023 it is submitted that the description of the property is not sufficient to identify the decree schedule property. The house in occupation of the Judgement Debtor is of more the 2000 sq. feet in extent. The decree is only with regard to house of 600 sq. feet only. Without sufficient description, the Decree Holder cannot seek execution. If the execution is ordered without proper identification of property, the Judgement Debtor will suffer irreparable injury and hardship. Therefore the above decree is not executable."



7. The main objection raised by the respondent-judgment debtor is that the decree put into execution is in relation to house property measuring 600 sq.ft., whereas, judgment debtor is in occupation of more than 2000 sq.ft. It is further contended that without proper identification of the property, if the execution is ordered, the judgment debtor would suffer irreparable injury and hardship.

8. Order 21 Rule 35 of CPC governs execution of decree of immovable property which read as follows:

"35. Decree for immovable property.- (1)

Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.



(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

"(4) Where delivery of possession of a house is to be given and it is found to be locked, orders of Court shall be taken for breaking open the lock for delivery of possession of the same to the decree-holder.

If it is found at the time of delivery that there are movables in the home to which the decree-holder has no claim and the judgment-debtor is absent, or if present, does not immediately remove the same, the officer entrusted with the warrant for delivery shall make an inventory of the articles so found with their probable value, in the presence of respectable persons on the spot, have the same attested by them and leave the movables in the custody of the decree-holder after taking a bond from him for keeping the articles in safe-custody pending orders of Court for disposal of the same.



The officer shall then make a report to the Court and forward therewith the attested inventory taken by him.

The Court shall, thereupon, issue a notice to the judgment-debtor requiring him to take delivery of the said movable within thirty days from the date of the notice and in default they will be sold in public auction at his risk and the proceeds applied for meeting all legitimate expenses of custody and sale and the balance, if any, will be refunded to the judgment-debtor:

Provided that if movable articles referred to above are perishable, the officer shall sell them in public auction immediately, and bring the proceeds into Court. The notice to the Judgment-debtor shall in such a case call upon him to receive the amount from Court within three months.” (w.e.f. 17-8-1966)”

9. The Executing Court is bound to consider the objections raised by the judgment debtor and pass appropriate order. In the instant case, the Execution Court is expected to consider objection filed by the judgment debtor and has to decide whether enquiry would be necessary or not. The Executing Court without



recording any reason or the purpose of enquiry, posted the execution petition for an enquiry. The order should indicate the reason for posting Execution Petition for an enquiry. In normal circumstances, no enquiry would be necessary when a decree for possession is put into execution in terms of Rule 35 of Order 21 of CPC, but the same would depend on the objection that would be raised by the judgment debtor.

10. In the above circumstances, the following:

ORDER

- a) Impugned order dated 04.10.2023 on the file of Civil Judge and JMFC, Moodabidri, posting the Execution Petition for enquiry is set aside.
- b) The Executing Court is directed to consider the objection filed by the respondent-judgment debtor on 26.05.2023, hear the parties and proceed further in accordance with law in the light of the observations made above.

**Sd/-
JUDGE**