



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE R. NATARAJ

WRIT PETITION NO. 26573 OF 2019 (GM-CPC)

BETWEEN:

1. JOY JEEVAN PRAKASH VEIGAS
S/O. MR. PETER VEIGAS
AGED ABOUT 42 YEARS
2. CYNTHIA PINTO
W/O. JOY JEEVAN PRAKASH VEIGAS
AGED ABOUT 38 YEARS

BOTH ARE RESIDING AT
KUTEL HOUSE, VITTAL POST,
BANTWAL TALUK-574243.

...PETITIONERS

(BY SRI. CYRIL PRASAD PAIS, ADVOCATE)

AND:

1. NAGAMMA
W/O. SEKAR PUJARI
AGED ABOUT 50 YEARS
RESIDING AT LINGAPPA COMPOUND,
3RD LEFT CROSS, SUTARPET,
MANGALORE-575002
2. DINESH KUMAR
S/O. LATE BABU KOTTARI
AGED ABOUT 60 YEARS
RESIDING AT "ANUDEEKSHA",
NAGABANA ROAD, 1ST BRIDGE,
MARNAMIKATTE,
MANGALORE-575001
3. JAYASHANKAR M.,
S/O. RAJANATH ANCHAN
AGED ABOUT 55 YEARS
R/AT DOOR NO 1-67/1,
BHAIRAVAKRUPA BUILDING,





1ST FLOOR, NEHRU NAGARA ROAD,
SUTERPETE, KANKANADY,
MANGALORE-575002

...RESPONDENTS

(BY SRI. ANISH ACHARYA, ADVOCATE (ABSENT);

NOTICE SERVED ON RESPONDENT NO.2;

VIDE ORDER DATED 18.12.2023, SERVICE OF NOTICE TO
RESPONDENT NO.1 IS HELD SUFFICIENT)

THIS WP IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED
ORDER DATED 22.04.2019 PASSED BY THE 2ND ADDL. SENIOR CIVIL
JUDGE AND CJM AT MANGALORE IN EX NO.116/2014 ON I.A.NO.8
FILED UNDER ORDER 21 RULE 97 READ WITH SECTION 151 OF CPC
WHICH IS AT ANNEXURE-A AND CONSEQUENTLY DISMISS THE
APPLICATION FILED BY THE OBSTRUCTION PETITIONER/3RD
RESPONDENT HEREIN AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN
'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The decree holders in E.P.No.116/2014 on the file of
the II Additional Senior Civil Judge and CJM at Mangaluru
have filed this writ petition challenging an order dated
22.04.2019, by which, the executing Court rejected
I.A.No.7 filed by them under Section 151 of Civil
Procedure Code for police help to the Court Amin to deliver
the possession of the decreed property. They have also



challenged an order passed on I.A.No.8 filed by the respondent No.3 herein under Order XXI Rule 97 read with Section 151 of Civil Procedure Code, by which, the Court directed an inquiry into his claim.

2. The decree holders filed O.S.No.134/2010 for specific performance of an agreement of sale dated 09.07.2010 executed by the defendant/respondent No.1 herein. The said suit after contest was decreed on 20.01.2014. This judgment was put in execution in E.P.No.116/2014. At that stage, the respondent No.3 herein filed an application to be impleaded in the execution petition on the ground that he had an agreement of sale in respect of the suit property, which was executed by the respondent No.1 herein. The said application was rejected in terms of an order dated 07.04.2015 which was challenged in W.P.Nos.18858/2015 and 19216/2015 which was allowed and he was permitted to come on record in terms of the order dated 03.11.2017. In the meanwhile, the respondent No.2 herein claiming to



have some semblance of interest, challenged the judgment and decree passed in O.S.No.134/2010 by filing RFA No.516/2014. The Executing Court thereafter executed a sale deed in favour of decree holder on 02.05.2015. The division bench of this Court in RFA No.516/2014 passed the following interim order on 10.03.2016:

"Admit.

As the respondent has performed his part of the contract and in fact a sale deed is also executed in his favour by the Court, he would be entitled to possession of the property, which he can take in the Trial Court by filing an appropriate miscellaneous application. However, the amount deposited in the Trial Court shall not be disbursed till the disposal of this appeal on merits.

It is open to the respondent to approach the writ court with this order and seek for appropriated orders as an order of stay is operating."



3. In the meanwhile, following the directions of the Division Bench of this Court as stated above, the decree holders filed an application (I.A.No.7) for police help to the Court Amin at the time of delivery of the possession of suit property. The respondent No.3 herein also filed an application (I.A.No.8) under Order XXI Rule 97 read with Section 151 of Civil Procedure Code contending that he had purchased the suit property from the judgment debtor in terms of a sale deed dated 23.03.2016. The Executing Court in terms of the impugned order rejected the application filed by the decree holders for police help and allowed the application filed by the respondent No.3 under Order XXI Rule 97 read with Section 151 of Civil Procedure Code, unmindful of the proscription under Order XXI Rule 102 of Civil Procedure Code, that the provisions of Order XXI Rules 98 and 100 of Civil Procedure Code is not available to apply to a person who was purchased the property *pendete lite*. Being aggrieved by the aforesaid common order, passed by the



Executing Court, the petitioners/deGREE holders have filed this petition.

4. The learned counsel for the petitioners contended that admittedly the respondent No.3 purchased the property from the judgment debtor on 23.03.2016 and therefore, he was not entitled to invoke Order XXI Rule 97 read with Section 151 of Civil Procedure Code. He submits that the decree not only bound the judgment debtor, but also any person claiming through the judgment debtor. He referred to Section 50 of Civil Procedure Code and contended that the decree is executable not only against the judgment debtor, but also against any person claiming through him. He therefore, contends that the respondent No.3 did not have any independent right to come on record and oppose the execution of the decree. He further contends that the sale deed was already executed in favour of the decree holders on 02.05.2015 and it was incumbent upon the Executing Court to deliver the possession of the suit schedule property. He contends that



a number of persons had gotten into the litigation and therefore the possession of the property cannot be delivered without the help of the police.

5. The learned counsel for the respondents is absent and therefore this Court did not have the benefit of his submission.

6. Be that as it may, the fact that the decree holder obtained a decree of specific performance of sale agreement dated 09.07.2010 is not in dispute. It is also not in dispute that the Executing Court had executed a sale deed on 02.05.2015 which was duly registered. The judgment debtor did not challenge the judgment and decree passed by the Trial Court. Therefore, the judgment and decree passed by the Trial Court in O.S.No.134/2010 became final in so far as the judgment debtor was concerned.

7. The respondent No.3 who claimed to have purchased the suit property from the judgment debtor in



terms of the sale deed dated 23.03.2016 obviously did not have any independent right and exclusive right in the suit property and he having purchased the suit property after filing of the suit and after the sale deed was executed in favour of the decree holders, did not have any independent right to come on record in the execution petition and oppose the execution of the decree.

8. Order XXI Rule 102 of Civil Procedure Code reads as follows:

"102. Rules not applicable to transferee pendente lite.- Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person."

9. Therefore, the respondent No.3 was not entitled to obstruct the execution of decree in any manner



whatsoever. The Hon'ble Apex Court in the case of **Silver Line Forum Pvt. Ltd. Vs. Raji trust and others - (1998) 3 SCC 723** at paragraph No.10 held that:

" 10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under Rule 97 or Rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of



such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act."

10. The respondent No.3 could not claim that he was a bonafide purchaser, having regard to the fact that the sale deed in his favour was subsequent to filing of the suit and in view Section 52 of the Transfer of Property Act, 1882, he could not claim to be a bonafide purchaser entitled to the benefit akin to a bonafide purchaser without notice to the previous transaction under Section 19(1)(b) of the Specific Relief Act, 1963.

11. Assuming that the respondent No.3 has purchased the suit property from the judgment debtor, his interest is sufficiently taken care of in RFA No.516/2014 where the division bench of this Court had directed that the balance consideration deposited by the decree holder shall not be disbursed until disposal of the RFA No.516/2014.



12. In so far as the application filed by the decree holders is concerned, the fact that the sale deed was executed in favour of the decree holders, entitled the decree holders to recover possession through the process of executing Court.

13. Having regard to the involvement of strangers in the suit property, who purportedly have purchased the suit property from the decree holders during the pendency of the proceedings, it was very likely that handing over possession of the suit property by the Court Amin to the decree holders would be obstructed and therefore, in the fitness of things, the executing Court must have allowed the application filed by the decree holders for police help.

14. In that view of the matter, this petition is **allowed** and the impugned order dated 22.04.2019 passed by the Executing Court in E.P.No.116/2014 rejecting the application (I.A.No.7) filed by the decree holders for police help to the Court Amin at the time of



delivery of possession of the suit property to the decree holders is allowed and the Executing Court is directed to issue necessary directions to the jurisdictional police to grant protection to the Court Amin to deliver the possession of the suit schedule property to the decree holders. The impugned order allowing the application (I.A.No.8) filed by the respondent No.3 under Order XXI Rule 97 read with Section 151 of Civil procedure Code is set aside and the application filed by the respondent No.3 is rejected.

**Sd/-
JUDGE**

HJ
List No.: 1 Sl No.: 21