

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 9<sup>TH</sup> DAY OF OCTOBER, 2023**

**BEFORE**

**THE HON'BLE MR. JUSTICE K. NATARAJAN**

REGULAR FIRST APPEAL NO.1506 OF 2019

**BETWEEN:**

SRI B.K. GOPALA  
SON OF LATE B. KRISHNAPPA  
AGED ABOUT 61 YEARS  
RESIDING AT FLAT NO.C 220  
SURAKSHA LAND MARK  
80 FEET ROAD, ARKARE  
BANNERGHATTA ROAD  
BANGALORE - 560 076

... APPELLANT

(BY SRI K.S. HARISH, ADVOCATE)

**AND:**

1 . SMT NAGARATHNAMMA  
SINCE DECEASED REPRESENTED  
BY HIS LRS

1A. SMT. SUNANDAMMA  
S/O. LATE M. SUBRAMANYA  
AGED ABOUT 65 YEARS  
R/AT JAKKUR VILLAGE  
YELAHANKA HOBLI  
BENGALURU NORTH TALUK  
BENGALURU DISTRICT - 560 064

1B. SMT. ANITHA RANI  
D/O. LATE M. SUBRAMANYA  
AGED ABOUT 45 YEARS  
R/AT JAKKUR VILLAGE

YELAHANKA HOBLI  
BENGALURU NORTH TALUK  
BENGALURU DISTRICT - 560 064

1C. SMT. BHARATHI  
D/O. LATE M SUBRAMANYA  
AGED ABOUT 43 YEARS  
R/AT JAKKUR VILLAGE  
YELAHANKA HOBLI  
BENGALURU NORTH TALUK  
BENGALURU DISTRICT - 560 064

2 . SRI M SUBRAMANYA  
SINCE DECEASED,  
REPRESENTED BY HIS LRS.

2A. SMT. SUNANDAMMA  
S/O. LATE M. SUBRAMANYA  
AGED ABOUT 65 YEARS  
R/AT JAKKUR VILLAGE  
YELAHANKA HOBLI  
BENGALURU NORTH TALUK  
BENGALURU DISTRICT - 560 064

2B. SMT. ANITHA RANI  
D/O. LATE M. SUBRAMANYA  
AGED ABOUT 45 YEARS  
R/AT JAKKUR VILLAGE  
YELAHANKA HOBLI  
BENGALURU NORTH TALUK  
BENGALURU DISTRICT - 560 064

2C. SMT. BHARATHI  
D/O. LATE M. SUBRAMANYA  
AGED ABOUT 43 YEARS  
R/AT JAKKUR VILLAGE  
YELAHANKA HOBLI  
BENGALURU NORTH TALUK  
BENGALURU DISTRICT - 560 064

3 . THE KARNATAKA STATE KHADI AND  
VILLAGE INDUSTRIES WORKERS HSBC LIMITED  
HAVING ITS OFFICE AT NO.10  
JASMA BHAVAN  
BANGALORE - 560 051

REPRESENTED BY ITS SPECIAL OFFICER  
SRI N LAKSHMAN  
BENGALURU DISTRICT

4. THE KARNATAKA STATE KHADI AND  
VILLAGE INDUSTRIES WORKER'S HBCS LIMITED  
NO.10, JASMA BHAVAN  
BANGALORE - 560 052

REPRESENTED BY ITS  
LIQUIDATOR SRI. MURALIDHARA  
AGED ABOUT 48 YEARS

... RESPONDENTS

(BY SRI YESHU MISHRA, ADVOCATE FOR R2  
SRI UNNIKRISHNAN, ADVOCATE FOR R3 AND R4  
VIDE ORDER DATED 4.9.2023, R1 IS DEAD  
L.R.S OF R2 ARE TREATED AS L.R.S OF R1)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION  
96 OF CPC AGAINST THE ORDER DATED 19.04.2018 PASSED  
ON I.A.NO.1 IN EX.NO.53/2018 ON THE FILE OF THE XX  
ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE  
CITY DISMISSING THE IA NO.1 FILED UNDER ORDER 21 RULE  
97 READ WITH SECTION 151 OF CPC.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND  
RESERVED FOR JUDGMENT ON 8.9.2023 THIS DAY, THE COURT  
PRONOUNCED THE FOLLOWING:

**J U D G M E N T**

This appeal is filed by the appellant - objector under Section 96 of CPC for setting aside the order of the XX Additional City And Civil Judge, Bengaluru in Ex. No.53/2019 dated 19.04.2019 for having rejected the application of the objector filed under Order XXI Rule 97 read with Section 151 of CPC.

2. The appellant was the objector and respondent No.1 was the decree holder and the other respondents were the judgment debtors in the execution case.

3. Heard the arguments of learned counsel for the parties.

4. The case of the appellant before the trial Court is that the appellant filed I.A. under Order XXI

and Rule 97 of CPC contending that he s the absolute owner of the site bearing No.11 (panchayath khatha 342) measuring 1200 sq. ft. carved out of land in Sy.Nos. 9/3 and 9/4 measuring 2 acres 11 guntas situated at Jakkur village, Yelahanka hobli having purchased from one Ramakka and her son Subramanya through sale deed dated 23.7.2001. The lands owners Ramakka and judgment debtors have jointly executed sale agreement dated 3.9.1992 with Karnataka State Khadi Gramodyoga Workers House Co-operative society (hereinafter referred to as 'housing society') for the sale of petition schedule property and also executed GPA on 3.9.1992 in favour of N. Lingaraj and Krishnamurthy and another Power of attorney on 19.6.2001 in favour of Lingaraj and Syed Mustaf Ahmed as their attorneys with right to develop their land. The judgment debtor after conveyed various sites to several individuals prior to

2001, but mischievously colluded with decree holder judgment debtor No.3 filed a suit in O.S No.7758/2016 by suppressing material facts and the suit came to be decreed. By virtue of the decree, the execution petition was filed for targeting the individual site owners in the layout and dispossessing and the other site owners by obtaining delivery warrant. Hence, prayed for the allowing the application to make an enquiry on the application.

5. The decree holder filed statement of objection by denying the contention of the objector and the sale deed executed by Hanumakka and the housing society and contended that they never entered any sale agreement. It is further contended that the said agreement and the land stated in the agreement is not the subject matter of decree passed in O.S No.7758/2016 where the suit was decreed for

declaration and has been granted in the sale agreement without possession dated 3.8.1992. It is further contended that no sites of the objector were formed in the land in Sy.Nos.9/3 and 9/4 which is agricultural land. The plaintiff and defendant are not the parties to the alleged sale deed and the land was still the agricultural land and no sites were formed. The applicant is one among several fraudulent claimant with concocted sale deed approached the court which were not binding on the absolute owners. after disposal of writ petition NO.44691-92/2017 the applicant neither filed independent suit nor filed application for impleading in the said suit for protecting their right. Therefore, it is contended that the boundaries mentioned in the sale deed are not tallying with the suit schedule premises. It is contended that the objector has no manner of right

title or interest over the suit schedule property, hence, prayed for rejecting the application.

6. After hearing the arguments of learned counsel for the parties, the trial Court dismissed the application by impugned order, which is under challenge.

7. The main contention of the counsel for the appellant is that the trial Court dismissed the application of the objector under order XXI Rule 97 of CPC without enquiry, the objector application must be enquired and passed the judgment as good as suit but it cannot be rejected without enquiry, hence prayed for setting aside the same.

8. Per contra, learned counsel for the respondent has contended that the objector is nothing

to do with the suit schedule property which is not part and parcel of the property in execution or in the decree if at all any right over the property under sale deed the objector can file separate suit but not file application in the execution proceeding as objector Hence, supported the order passed by the trial Court and prayed for dismissal of the application. The learned counsel for the respondent also contended that previously the said Co-operative Society and other persons have filed appeals before the High Court which came to be dismissed by the High Court in R.F.A. No.1434/2017 which was upheld by the Hon'ble Supreme Court. therefore, the question of filing objector application does not arise. If at all they have any right they can establish in the civil suit, hence prayed for dismissing the application.

9. Having heard the arguments of learned counsel for the parties, perused the records.

10. The point that arise for my consideration :

*(i) Whether the order of the Trial Court rejecting the objector's application calls for interference?*

11. On considering the application filed by the appellant stating that the appellant claims that he is said to be the absolute owner of the site bearing No.11 of Jakkur village (panchayat khatha No.342) measuring 30 x 40 ft. and he claims that the site was formed in Sy.Nos.9/3 and 9/4 of Jakkur village and one Hanumakka and Subramanya executed sale deed in favour of housing society by executing general power of attorney and in turn, the sale deed was executed, but subsequently in collusion with the judgment debtor and decree holder filed collusion suit

and obtained decree in O.S. No.7758/2016 and trying to get delivery warrant in execution proceedings.

12. On perusal of the decree passed in O.S. No.7758/2016, it pertains to the land in Sy Nos.9/3 and 9/4 of Jakkur village, whereas the sale deed produced by the objector does not reveal that the sites were formed out of Sy. Nos.9/3 and 9/4 of Jakkur village and also it is not mentioned that the lands were sold to the housing society and it was acquired by them and formed any layout by producing the approved layout plan, etc. It is well settled by the Hon'ble Supreme Court that while considering the application under Order XXI Rule 97 of CPC, there must be enquiry and the Court can also dispose the application on the admitted facts. Here, in this case, the documents produced by the learned counsel for the respondent reveals that the Welfare Association of

the Co-operative Society have filed Regular Appeal along with so many persons against rejection of their application for impleading in O.S. No.7768/2016, which came to be dismissed by the Appellate Court and therefore, they filed appeal before this Court in R.F.A. No.1434/2017 and connected matters. The Coordinate Bench of this Court dismissed the said appeals holding that if at all they claim any ownership over the site and, if they are in possession, they have to file separate suits for establishing their rights.

13. Against the order of dismissal of their appeals, one Krishnamurthy and others including the Co-operative Society Welfare people filed civil appeals to the Hon'ble Supreme Court in C.A. Nos.2701-2704/2020 and the Hon'ble Supreme Court dismissed the appeals. Therefore, once they filed similar application for impleading themselves as party before

the original suit and if it was dismissed, it would indicate that it has attained finality in view of the judgment of the Hon'ble Supreme Court. Such being the case, if at all the appellants have any right under the sale deed and if they are in possession, they have to file a suit and establish their rights independently. It is also submitted that some of the persons already filed suits, which came to be dismissed and they already filed appeals before the High Court. Such being the case, considering their application under Order XXI Rule 97 CPC for making enquiry does not arise as the applicant does not have any title over the land in Sy. Nos.9/3 and 9/4, which is the subject matter of execution proceedings. When there is no reference in respect of Sy. Nos.9/3 and 9/4 in the sale deed, the question of allowing the appellant to object the petition for making enquiry, does not arise.

14. The Hon'ble Supreme Court in the case of **SILVERLINE FORUM PVT. LTD Vs. RAJIV TRUST AND ANOTHER** reported in **(1998)3 SCC 723**, at paragraphs 12 and 14 of the judgment, has held as under:

*"12. The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resister raised it. The questions which the executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during*

*execution proceedings. Hence, it is necessary that the questions raised by the resister or the obstructor must legally arise between him and the decree-holder. In the adjudication process envisaged in Order 21 Rule 97(2) of the Code, the execution court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.*

**14.** *It is clear that the executing court can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. The court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary."*

15. The Hon'ble Supreme Court has held that the third party objector should be allowed only to determine the rights of the objector in the suit schedule property in order to determine the rights of the objector and the Court is not obliged to determine the question, merely because the resistor raised it. Herein, in this case, the appellant is not at all concerned with the land in Sy. Nos.9/3 ad 9/4 and, his title deed and identity of the property elsewhere. Such being the case, there was need for the trial Court to allow the objector for making an enquiry to determine the right of the appellant in the execution proceeding. Therefore, the trial Court has rightly dismissed the application without going into the enquiry. It is the settled principles of law that the Trial Court can allow the objector to enquire in the execution proceedings if his right is affected. In view of the aforesaid judgment, it is not necessary for making an enquiry.

Therefore, I am of the view that the order of the trial Court does not require interference by this Court. The appellant shall establish his right by filing a separate suit and need not participate in the execution proceedings.

16. Accordingly, the appeal filed by the objector is hereby dismissed.

**Sd/-  
JUDGE**

CS  
CT: SG