

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 05TH DAY OF MARCH 2014

BEFORE

THE HON'BLE MR. JUSTICE MOHAN .M. SHANTANAGOUDAR

WRIT PETITION No.9011/2014 (GM-CPC)

BETWEEN:

Sri Thimmanayaka,
S/o late Thimmanayaka,
Aged about 57 years,
R/at Rama Mandira Road,
H.D.Kote town, H.D.Kote Taluk,
Mysore District-571 114.

Petitioner

(By Sri K.A.Prakash, Advocate)

AND:

1. Mr. K. Shivanna,
S/o Doddakalegowda,
Aged about 32 years,
R/o Beerihundi village,
Jayapura Hobli,
Mysore Taluk,
Mysore District-571 114.
2. Mr.H.C.Puttanaika,
S/o late H.Chowdanaika,
Aged about 52 years,
R/at Nayakara Beedi,
Rama Mandira Road,
H.D.Kote town, H.D.Kote Taluk,
Mysore District-571 114.

Respondents

This writ petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash the impugned order dated 04.01.2014 passed on I.A.No.1 filed under Order 21 Rule 34 r/w Section 151 of CPC in Execution case No.45/2013 pending on the file of the Addl. Senior Civil Judge and JMFC, Hunsur, Annexure-F.

This petition coming on for preliminary hearing this day, the Court made the following:

ORDER

A suit came to be filed by respondent No.1 for specific performance against respondent No.2 in respect of an agricultural land. During pendency of the suit O.S.No.21/2007, petitioner herein filed an application for impleading which came to be rejected. Said order has attained finality viz., O.S.No.21/2007 came to be decreed. The decree holder filed execution No.45/2013 for getting the decree for specific performance, executed. The decree holder filed an application under Order 21 Rule 34 r/w Section 151 of the code of Civil Procedure and prayed for appointment of Court Commissioner for getting the sale deed executed in favour of decree holder. The said application is allowed.

2. This Court does not find any error in the impugned order in as much as petitioner is third party to the litigation. The judgment debtor is not before the Court questioning the impugned order or questioning the decree. Hence, no interference is called for. Petition fails and stands ***dismissed***.

3. If the petitioner has already filed independent suit for getting his rights declared, it is open for him to pursue his rights.

Sd/-
JUDGE

kcm