

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 7<sup>TH</sup> DAY OF APRIL 2003

BEFORE

THE HON'BLE MR. JUSTICE B.PADMARAJ

CIVIL REVISION PETITION NO.1247/2003

**BETWEEN:**

1. Gangappa Mahadevappa Datanal,  
Aged about 75 years,  
Occ: Agriculture,  
R/o. Lingadal,  
Taluka & Dist., Gadag.
2. Laxmappa Timmappa Gudisalamani,  
Aged about 45 years,
3. Mallappa Tippanna Gudisalamani,  
Aged about 42 years,
4. Basavantappa Tippanna Gudisalamani,  
Aged about 40 years,

2 to 4 are residents of  
Gudisagar, Taluka Navalagund,  
Dist., Dharwad.

5. Yallappa Bhimappa Jantly,  
Aged about 67 years,  
Occ: Agriculture and Business,  
R/o. Gudisagar,  
Taluka Navalagund,  
Dist., Dharwad.

.. PETITIONERS

(Sri Jayakumar S. Patil, Adv.)

**AND:**

1. Rudrayya Somayya Salimath,  
Age major,
2. Panchaiah Somayya Salimath,  
Age major,
3. Shivayogi Somayya Salimath,  
Age major,
4. Sobayya Somayya Salimath,  
Age major,
5. Ashok Somayya Salimath,  
Age major,
6. Sangawwa,  
W/o. Somayya Salimath,  
Age major,

Respondents 1 to 6 are  
Residents of  
Gudisagar, Taluka Navalagund,  
Dist., Dharwad.

7. Shiddayya Rudrayya Salimath,  
Age major,  
R/o. Morab,  
Taluka Navalgund, Dist., Dharwad.
8. Susheelawwa,  
W/o. Gadigoppa Menasinaksi,  
Age major,  
R/o. Kanakikoppa,  
Taluka Navalgund,  
Dist., Dharwad.

9. Vijayawwa,  
W/o. Basappa Javoor,  
Age major,  
R/o. Hanchinal,  
Taluka Saundatti,  
Dist., Belgaum.
10. Mallawwa,  
W/o. Hemareddy Sasvihalli,  
Aged major,  
C/o. Hemareddy Sasvihalli,  
Retd. Executive Engineer,  
K.E.B. Renuka Nagar,  
Last Bus Stop Hubli.
11. Shobawwa,  
W/o. Shivareddi Hosamani  
@ Konareddi, Age major,  
Sarvodaya Colony,  
Near K.E.B. Gadag, Dist., Gadag.
12. Gangawwa,  
W/o. Vilasareddi Konareddi,  
Age major, R/o. Chilakawadi,  
Taluka Navalgund, Dist. Dharwad.

**.. RESPONDENTS**

This Civil Revision Petition is filed under Section 115 of CPC against the Order dated 22-3-2003 passed in Ex.No.31/2001 on the file of the Civil Judge (Jr. Dn.), Navalgund, rejecting the objections raised by the petitioners/J.Drs.

This Civil Revision Petition coming on for admission this day, the Court made the following:

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**ORDER**

Heard the arguments of the learned Counsel for the petitioners and carefully perused the case records including the impugned order made by the executing court dated 22-3-2003.

2. The petitioners herein are the Judgment Debtors in the Court below and the respondents 1 to 6 and 7 are the Decree Holders. The respondents 8 to 12 are also the Judgment Debtors in the Court below, but it is stated that they have remained ex-parte in the execution proceedings and hence notice to the said respondents is sought to be dispensed with.

3. The brief facts of the case as enumerated in the revision petition reads thus:

"a) The predecessor of respondents 1 to 6 and respondent 7 filed suit O.S.No.52/1979 for declaration and possession of property bearing VPC Nos.257 and 258 claiming title under a Gift Deed dtd. 23-7-1888.



The schedule of the property given in the suit as well as in the Gift Deed is as follows:-


EAST by .. Road

WEST by .. Ramanagouda's  
remaining portion

NORTH by .. Erannagouda  
Kulkarni

SOUTH by .. Channappa  
Gouda Kulkarni.

The measurement of the property given in the suit is EAST-WEST 75 mola, NORTH-SOUTH 19 mola. An amendment application was made to include VPC.322 which is lying to the west of the schedule property VPC. Nos.251 and 258, and the said property stands in the name of sadusiddara shivayogi Math in possession of the petitioners. The Trial Court decreed the suit in respect of VPC.Nos.257, 258 and 322.




b) On Appeal R.A.No.111/1993, filed by the petitioners appeal was partly allowed, decreeing the suit only in respect of VPC.257 and 258, and dismissed the suit in respect of VPC.No.322. The Respondents 1 to 7 preferred RSA 1247/94, and the same was dismissed on 12-3-1998, confirming the order passed in the Regular Appeal with an observation that if the plaintiffs have any right in respect of VPC 322, they may take separate steps.

c) The Respondents 1 to 7 filed Execution No.31/2001 and the boundary furnished in the Execution is same as stated above. Delivery warrant was issued and the bailiff measured the property from taking the road as the fixed boundary and the measurement of 75 mola EAST to WEST ended exactly to



the Eastern wall of the construction situated in VPC No.322. The Report also says that Decree Holder already in possession and are residing in the schedule property and therefore delivery of possession do not arise. The Decree holder did not report satisfaction and therefore, delivery warrant was again issued. Again, the Bailiff measured the property, mahazar was drawn and even Second time, it was noticed that the measurement of the property from the road upto the wall of the construction in VPC.322 tallies with the measurement given in the suit. The property was also measured from the boundary of VPC.322 and it tallied with the measurement and boundary given in the suit. The Decree holder did not acknowledge the report.



d) The Decree holder filed I.A.No.5 seeking for appointment of Commissioner to fix up the boundaries and the width of the Road which is the EASTERN boundary given in the suit. The Decree holder sought for fixing the boundary as per the measurement given by Zilla Panchayath in its communication dtd. 20-7-2002 wherein width of the road was shown as 30 mtrs. The petitioners applied to Zilla Panchayath to give the boundaries and the width of the road. The Zilla Panchayath gave an endorsement pointing out that the width of the road is 30 feet and the measurement shown in the letter issued to the Decree holder as 30 mtrs. is wrong and it should be read as 30 feet. The petitioners filed objections to I.A.No.5, produced all the





documents including the endorsement issued by the Zilla Panchayath apart from the Commissioner's report and the sketch drawn in the original suit. The respondent Dhr produced a Government order dtd. 9-10-1998, along with certain annexures wherein the building line in respect of village roads is shown as 30 mtrs. This is supposed to be a notification issued under the Karnataka State Highways Act. The executing court going totally outside its authority and the scope of execution, has now held that the road width of Eastern boundary should be taken as 30 metres as per the Zilla Panchayath endorsement and G.O., the commissioner should fix up the road width of 30 metres and thereafter the measurement of the property as given in the execution



i.e., 75 mola East-West should be taken from the edge of the road and the delivery should be effected. This measurement as stated is to be done, it would straight away take the property situated in VPC. No.322 for which suit has already been dismissed. That the Civil Revision Petition No.4724/2002 has filed against the I.A.No.5, in that C.R.P., this Hon'ble Court has disposed off on 11-12-2002, with a clarification observed that "The clarification is to the effect that the Commissioner appointed by the Court while proceeding to fix the width of the road as per the impugned order made by the Court below, shall obtain in the relevant records which are stated to be available with the revenue department, or the Survey Department as per the endorsement



dtd. 11-9-02, issued by the Engineering section of Zilla Panchayath and after the width of the road is so fixed on the basis of the relevant records. According to the direction of this Hon'ble Court, the taluka Surveyor appointed as a court commissioner, and submitted the report to the Court. The report of the Court commissioner is produced herewith and marked as Annexure-'A'."

The Court below while rejecting the objections of the petitioners/J.Drs., to the report of the court commissioner has observed in the course of its impugned order as under:


"The main contention of the J.Drs., is that the court commissioner has not considered any aspects of the letter dated 11-9-2002 issued by the engineering sub-division,



Navalgund, while executing the commissioner work i.e., fixing the boundary of the road, which is situated to the east of suit property. It is also stated in the objections that, the commissioner has not fixed the boundary and measured the property starting from V.P.C.No.322, which is situated to the west of the suit property.

The commissioner has submitted his report alongwith the documents at serial No.1 to 72, which includes the commission warrant, memo of instructions and various documents, letters and spot panchanama and notification and report.

The Hon'ble High Court was observed during the course of the order that, the endorsement issued




by the engineering section of Zilla Panchayat, which was to the effect that, the width of the road, as it stands today is 30 feet and that, the relevant records pertaining to the specification of the said road are available with revenue department and survey department. It was further observed that, the very same authority in the first instance issued a document, which showed that, the width of the road is 30 meters. But, subsequently, they issued another endorsement to the J.Dr., wherein they tried to say that, the authenticated records in respect of such roads, which available with revenue and survey departments and the width of the road as it existence is about 30 feet. On that basis, the Hon'ble High Court was pleased to observe that, the order passed by



this Court does not indicate that, the commissioner should fix the width of the road as 30 meters and then fix the eastern boundary of the petition schedule property.

In view of the same, the Hon'ble High Court was pleased to issue clarification in this regard. The clarification is to the effect that, the commissioner appointed by this Court while proceeding to fix the width of the road as per the order dated 2-12-2002, shall obtain the relevant records which are stated to be available with revenue department or the survey department, as per the endorsement dated 11-9-2002, issued by the engineering section of Zilla Panchayat and after the width of the road is so fixed on the basis of the relevant records, the



commissioner may submit his report depending upon the acceptance or otherwise of the said report, the court may issue delivery warrant in favour of the decree holder.

The court commissioner has visited the place and executed commissioner work by taking the assistance of the Government Circular in "ಕೃಷ್ಣಾ-44-ಸೀರ-39 ದಿನಾಂಕ 01-04-2002". The Tahasildar, Navalgund was pleased to furnish the above noted Government Circular to the Court commissioner.

Therefore, the commissioner has taken steps to obtain the necessary documents from the revenue department. Further, the commissioner has submitted his report alongwith documents at serial No.1 to 72, which also



includes the letter or endorsement dated 11-09-2002, issued by engineering section of Zilla Panchayat at serial No.45 in his report. This fact itself goes to show that, the commissioner has taken into consideration of the memo of instructions issued by both the sides and endorsement dated 11-09-2002, while fixing the boundary of the road situated to the east of the suit property. Further, the court commissioner has also taken the help from table No.2, which is appended to the Government Circular No. ' ' ಕೂರ್ಗ-44-ಸಿಬ್ಬ-39 ದಿನಾಂಕ 01-04-2002 ' ' supplied by the Tahashildar, Navalgund. As per the table No.2, the width between two control lines in respect of village roads is 30 meters. The commissioner has also stated the said factor in his report, which





is at page No.71. The commissioner report clearly goes to show that as per the table No.2, the standard for the control line in respect of village roads is 30 meters. Accordingly, the commissioner has measured the road in question from center of the road and fixed the boundary from the center of the road and shown the boundary of the road in red line in his report.

In view of the above discussions, I hold that, there are no sufficient grounds to disbelieve or reject the report of the commissioner. Accordingly, the objections raised by the counsel for the J.Dr. are hereby rejected."



4. It is these findings which are now sought to be challenged in this revision petition filed by the petitioners/J.Drs.


5. Learned Counsel for the petitioners while assailing the above findings of the Court below has contended that when the matter had come before this Court on the earlier occasion in C.R.P.No.4724/2002, this Court had observed that the commissioner appointed by the Court while proceeding to fix the width of the road as per the impugned order made by the Court below shall obtain the relevant records which are stated to be available with the Revenue Department or the Survey Department as per the endorsement dated 11-9-2002 issued by the engineering section of Zilla Panchayat and after the width of the road is so fixed on the basis of the relevant records, the commissioner may submit his report and depending upon the acceptance or otherwise of the said report, the Court may issue the delivery warrant for delivering the property to the decree holders. He contended that with these observations and clarifications, the revision petition filed by the petitioners earlier had been disposed of. He



contended that the suit filed by the decree holders was based on a Gift Deed of the year 1898 wherein the measurement of the property was given as 75 molas East-West and 19 molas North-South and that the eastern boundary was shown as road and in the suit filed by the decree holders this property had been described as VPC Nos. 257 and 258. He contended that during the pendency of the suit, an attempt was made by the decree holders by filing an application to include a property bearing VPC No.322 of the petitioners herein and a decree came to be passed by the trial Court including the property bearing VPC No.322 which has however been subsequently modified to that extent by the appellate Court. He contended that the decree granted in favour of the decree holders was thus confined only in respect of the properties bearing VPC Nos.257 and 258. He contended that the Court below has now passed the order with reference to the report of the commissioner fixing the red line shown by the commissioner in his sketch which on the face of it cannot form the boundary line with regard to the property pertaining to the description of the year 1898. He further contended that the Circular issued by the Government of 2002 referred to by the



commissioner in his report cannot be applied to a document of the year 1988. He also draw my attention to sections 7 and 9 of the Karnataka State Highways Act to contend that the building line is not the road boundary and it is only in the nature of a restriction imposed upon the owner to keep the said space vacant. He also invited my attention to sections 15 and 16 of the said Act to contend that if such space is required by the Government, it has to be acquired. He contended that in this case, the building line which is shown as red line in the sketch prepared by the commissioner has been wrongly construed as the boundary line to measure the decretal property. He contended that the commissioner in his report has specifically stated that no records are available with any of the authorities to show the width of the road in question and if that is so, he contended that the road as it existed should have been taken as the boundary for measuring the suit property. He also contended that if the red line shown in the sketch by the commissioner is to be taken as the boundary line, then some of the buildings shown therein would be supposed to be existing on the road. He therefore contended that this could not be the position with



regard to the width of the road in question. He contended that in the circumstances of the case, what was required to be fixed for measuring the suit property is the existing road. He also contended that the Circulars of the Government referred to by the commissioner is only what is recommended and even in the Circular the standard road width is shown to be 18 mts., and it is only the building line which has been shown as 30 mts., and the Court has wrongly accepted the building line as the boundary line shown in the report of the court commissioner. He contended that this fixation of the boundary in respect of the decretal property by the Court below is highly incorrect and improper and if the same is accepted, this would directly result in delivering the property bearing VPC No.322 to the Decree Holder. He further contended that the observation of the Executing Court in the impugned order that it is the red line which has to be taken as boundary line is not at all correct and proper. He therefore contended that the impugned order made by the Executing Court warrants interference in revision by this Court.



6. It is to be stated at the out set that the jurisdiction of this Court under Section 115 C.P.C., is a limited one. The Section is not directed against conclusion of law or facts in which question of jurisdiction is not involved. Unless one or the other facet of jurisdiction of the Executing Court passing the impugned order arises for consideration, this Court has no competence to interfere with the order of the court below. This Court can interfere only if the case falls within the scope of section 115 of C.P.C., otherwise, the decision of the Court below is binding on the parties. Section 115 of C.P.C., empowers this Court to satisfy itself on three matters namely that the order of the subordinate Court is within its jurisdiction; that the case is one in which the Court ought to exercise jurisdiction and that in exercising jurisdiction, the Court has not acted illegally, that is, any breach of some provision of law or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision and if this Court is satisfied on these three matters, it has no power to interfere because it differs from the conclusions of the subordinate Court on question of



fact or law. An erroneous decision on a question of law reached by the subordinate court which has no relation to question of jurisdiction of that Court, cannot be corrected by this Court under Section 115 of C.P.C. In this connection, a reference may be made to a decision of the Hon'ble Supreme Court in the case of **NADANLAL v. SHANLAL** reported in 2001 A.I.R., S.C.W., p.4655, wherein it is concluded as under :

"The cause shown by the appellant was not considered to be a "good cause" as provided under Order 13, Rule 2, CPC. It is true that power under Order 13, Rule 2 CPC could be exercised liberally and that "good cause" requires lesser degree of proof than that of "sufficient cause." [Re: *Arjun Singh v. Mohindra Kumar and others* (AIR 1964 SC 9937)]. May be that order is erroneous, however, it cannot be said that such order passed by the trial Court could be interfered under Section 115 of



CPC. It cannot be said that the trial Court has acted with material irregularity in exercise of its jurisdiction in rejecting the applications filed by the appellant and that the order, if allowed, would occasion a failure of justice. The words "material irregularity in exercise of jurisdiction" do not cover either errors of fact or law. [Re: Keshardeo Chamria v. Radha Kissen Chamria and others (1953) SCR 136]. It is open to the appellant to raise this contention at the appellate stage, if decree is passed against him."

7. In the instant case, it is not in dispute that the eastern and western boundaries of the property which has been decreed in favour of the Decree Holders and put into execution by them are road and the remaining portion of the Ramanagowda's property. The East-West measurement of the said





property which has to be delivered to the Decree Holders as per the decree passed in their favour is 75 molas, eastern boundary of the said decretal property is admittedly a road and the western boundary is the remaining portion of the property of one Ramanagowda as per the decree. According to the petitioners, the extent of 75 molas east-west ends or terminates exactly at the eastern wall of their property situated in VPC No.322. But the decretal property which has been defined by the fixed boundaries does not disclose the situation of the property bearing No.322 of the petitioners towards west of the decretal property. Be that as it may, since the western boundary of the decretal property is only the remaining portion of the property belonging to certain person, the extent of 75 molas (east-west) has to be measured from the road, which has to be taken as the fixed reference point. But the width of the road situated towards the east of the decretal property being not mentioned in any of the documents, it has to be ascertained from certain other authenticated records. This is exactly what has been done by the Court below. In the instant case, it had appointed one Taluka Surveyor as the court commissioner to measure the land after ascertaining



the width of the road situated towards the east of the decreetal property and accordingly the said court commissioner ascertained the width of the road from certain authenticated records of the Government department and taking margin of such road as the reference point, has measured the property from east to west 75 molas and submitted his report. The Court below examined the contentions of the petitioners with reference to the report of the court commissioner and has rejected the objections of the petitioners/J.Drs., by its impugned order. When the Court below after taking into consideration all the relevant material came to the conclusion that the report of the court commissioner deserves to be accepted and the objections of the J.Drs., are to be over-ruled, I find no jurisdictional error on the part of the Executing Court to interfere with the same under Section 115 of C.P.C. It is true that the Executing Court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of the decree. For construing a decree it can and in appropriate cases it ought to take into consideration, the pleadings as well as the proceedings leading up to the decree and in order to find out and give effect to




the decree, the Court often has to ascertain the circumstances under which certain words came to be employed. That is the plain duty of the Executing Court and if the Court fails to discharge that duty, it would be deemed to have failed to exercise the jurisdiction vested in it. When the eastern boundary of the decretal property is a road and the same is to be taken as a reference point for measuring the decretal property, it was the duty of the Court to ascertain the width of the road first and then to measure the property from the margin of the road. This is what the Court was required to do and has been done to give effect to the decree passed in favour of the Decree Holders. In fact, it is the duty of the Executing Court to ascertain the exact description of the decretal property as far as practicable. In this connection, a reference may be made to a decision of the Hon'ble Supreme Court in the case of PRATIBHA SINGH V. SHANTILAL PRASAD reported in 2002 A.I.R., S.C.W., p.5308 (A) wherein it is held as under :

“When the suit as to  
immovable property has been  
decreed and the property is not



definitely identified, the defect in the Court record caused by overlooking of provisions contained in O. 7, R. 3 and O. 20, R.3 of the C.P.C. is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to S.152 or S.47 of the C.P.C. depending on the facts and circumstances of each case which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under S. 152 of the C.P.C. by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge



or satisfaction of decree within the meaning of S.47, C.P.C. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission.

Where in a suit for specific performance of agreement to see immovable property, the map of suit property was not annexed to plaint, and the defendants who did not object to such fact promptly nor the trial Court insisted on such map and the map was filed for the first time in execution proceedings, however, the draft sale deed accompanied by a notice requiring objections to be made by judgment-debtor as provided by sub-rule (2) of R. 34 of O. 21 of the C.P.C. was not caused to be served by the executing Court, and the judgment-debtors repeatedly



insisted, on draft sale deed being delivered to them enabling objections being filed and there was no determination by the Executing Court that the immovable property as delineated and demonstrated in the map accompanying the draft sale deed was the property forming subject-matter of agreement to sell and the decree. The Supreme Court observing that it was S. 47 which would be invoked in instant case, gave directions to Executing Court to ascertain exact description of property."

8. Judging the impugned order made by the Executing Court on a touch-stone of the above principles, I find that the trial Court has exercised its jurisdiction properly and correctly. The Executing Court has given clear and cogent reasons for over-ruling the objections of the J.Drs., and accepting the report of the court commissioner. I am



satisfied that the impugned order made by the Executing Court does not suffer from any such error so as to warrant interference by this Court in revision under Section 115 of C.P.C. I am also satisfied that the approach of the Court below in the matter is legal and proper. It is clear to me that the petitioners/J.Drs., are only making a last ditch effort to prevent the decree holders from getting full benefit of the decree passed in their favour. In the facts and circumstances of the case, I find that the Executing Court has rightly rejected the objections raised by the petitioners against the report of the court commissioner. Therefore, for the foregoing reasons, I decline to interfere with the order of the Executing Court.

9. In the result, therefore, this revision petition filed by the petitioners is dismissed at the stage of admission itself.

10. No costs.

Sd/-  
Judge

vrp/-