

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22nd DAY OF APRIL 2015

BEFORE

THE HON'BLE MR.JUSTICE H.BILLAPPA

M.F.A.No.6726/2014 (RES)

BETWEEN:

H.C.Rajashekarappa,
S/o.Late T.S.Subbanna,
Aged about 54 years,
R/a.Gandhi Grama Village,
Kasaba Hobli,
Nanjangud Taluk – 571 301.

...APPELLANT

(By Sri.Raghupathy.T.N., Adv.,)

AND:

1. Sri.Harsha.P.Rao,
Aged about 39 years,
S/o.U.N.Padmanabha Rao.

2. Sri.U.N.Padmanabha Rao,
Aged about 64 years,
S/o.Late U.Narayana Rao.

Both are R/a.19th Cross,
B.P.Road, Nanjangud -571 301.

3. Sri.U.N.Shekar,
Aged about 55 years.
S/o.Late U.Narayana Rao,
R/a.D.No.8, MUDA Layout,

Basavanagudi Block,
Nanjangud – 571 301.

...RESPONDENTS

(By Sri.Vedavyasa Rao.R.S., Adv., for
M/s.Pavamana Assts.,)

This appeal is filed under section 104 (1)(e) r/w.Order 43 Rule 1(J) of CPC, against the order dated 27.8.2014 passed on I.A.No.4 & 5 in Execution No.155/2010 on the file of the Senior Civil Judge & JMFC, Nanjangud, allowing I.A.No.4 filed under Order 21 Rule 85 of CPC and rejecting I.A.No.5 filed under order 21 Rule 20 r/w.ASec.151 of CPC.

This appeal coming on for Admission this day, the Court delivered the following:-

J U D G M E N T

The appellant Sri.H.C.Rajashekarappa, the 1st respondent Sri.Harsha.P.Rao, the 2nd respondent Sri.U.N.Padmanabha Rao and the 3rd respondent Sri.U.N.Shekar and the learned counsel for the parties are present before the court. They have filed a compromise petition under Order XXIII Rule 3 of CPC which reads as under:

“The parties named above submits as under:-

1. *The dispute between the parties viz., appellant and the respondents has been settled.*

2. *The appellant has agreed to pay a total sum of ₹.52,00,000/- (Rupees Fifty Two Lakhs Only) in full and final settlement of their claim which is as under.*

3. *In pursuance of the above agreement, the appellant paid a sum of ₹.32,00,000/- on 27.3.2015 by way of three demand drafts as stated in paragraph 2 of the joint memo filed on 27.3.2015. The appellant as per the agreement, had to pay balance sum of ₹.20,00,000/-.*

4. *The same has been paid today as follows:*

Out of the balance amount of ₹.20,00,000/- (Rupees Twenty Lakhs Only) a sum of ₹.10,00,000/- is paid to U.N.Padmanabha Rao vide demand draft bearing No.501947 for ₹.8 lakhs drawn on ICICI Bank, Hassan & cash in a sum of ₹.2 lakhs and a sum of ₹.10,00,000/- (Rupees ten lakhs only) is paid to U.N.Shekar vide demand drafts bearing Nos.802683, 802684 and 802685 drawn on Corporation Bank, Hullahalli branch.

5. *Thus the entire amount due to the decree holder and purchaser has been paid today.*

6. *As a result, it is prayed as follows:*

a. *Both the parties to the appeal hereby agree that the spot sale deed dated 26.4.2014 and the court sale and confirmation thereon dated 3.6.2014 made in Execution No.155/2010 on the file of the Senior Civil Judge and JMFC, Nanjangud, may be set aside.*

b. *The sale certificate issued in favour of the decree holders shall be returned by respondent No.3 to the executing court and thereafter the executing court shall cancel the same and return the cancelled sale certificate to the appellant herein.*

c. *Respondent No.3, auction purchaser will also be entitled to withdraw the sum of ₹.65,00,000/- which was deposited in the court."*

The appellant and the respondents who are present before the court admit the terms of compromise petition and its due execution.

The learned counsel for the parties submit that the compromise may be accepted and the appeal may be disposed of in terms of the compromise.

The compromise is accepted.

Accordingly, the appeal is disposed of in terms of the compromise petition. The impugned order passed by the Executing Court in Ex.Case No.155/2010 on I.A.Nos.4 and 5 is hereby set aside. Consequently, the spot sale dated 26.04.2014 and the court sale and confirmation dated 03.06.2014 are hereby set aside. The 3rd respondent-auction purchaser is permitted to withdraw a sum of ₹.65,00,000/- (Rupees Sixty Five Lakhs) deposited by him before the Executing Court. The 3rd respondent shall return the sale certificate to the Executing Court. The Executing Court after canceling the sale certificate shall return the sale certificate to the appellant. The appellant shall pay a sum of ₹.1,00,000/- (Rupees One Lakh) to the 3rd respondent before the Executing Court on 2.6.2015 towards stamp duty.

Send back the records of execution case forthwith.

**Sd/-
JUDGE**

Dvr: