

IN THE HIGH COURT OF KARNATAKA

DHARWAD BENCH

DATED THIS THE 30<sup>TH</sup> DAY OF JUNE, 2020

BEFORE

THE HON'BLE MR.JUSTICE N.S. SANJAY GOWDA

C.R.P.No.100052/2015

BETWEEN

SUNIL S/O. SHANKAR WALEKAR,  
AGE: 28 YEARS, OCC: AGRICULTURE,  
R/O. LOKOLI, TQ: KHANAPUR,  
DIST: BELAGAVI.

..... PETITIONER

(BY SRI MRUTYUNJAY TATA BANGI, ADV.)

AND

LAXMAN S/O. SHIVRAM PATIL ,  
AGE: 60 YEARS, OCC: AGRICULTURE,  
R/O. LOKOLI, TQ: KHANAPUR,  
DIST: BELAGAVI.

..... RESPONDENT

(BY SRI R M KULKARNI, ADV. & SMT. HEMALEKHA K S, ADV.)

THIS CRP FILED UNDER SEC.115 OF CPC, AGAINST THE JUDGMENT AND ORDER DATED 21.07.2015 PASSED IN E.P.NO.108/2013 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, KHANAPUR, ALLOWING THE EXECUTION PETITION FILED BY THE DECREE HOLDER.

THIS PETITION COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. This revision is directed against the order of the Executing Court, by which, the Execution Petition has been allowed and the JDr has been directed to handover the possession of the petition schedule property forthwith, failing which, the registry was directed to issue delivery warrant of possession as per the decree passed in R.A.No.12/2010.

2. It is not in dispute that after a long drawn litigation, the suit filed by the decree holder Sri Laxman Shivaram Patil was decreed by the judgment of the Senior Civil Judge, Khanapur in R.A.No.12/2010.

3. The Senior Civil Judge, Khanapur passed a decree which reads as follows:

*"The suit of the plaintiff is decreed. The defendant is hereby directed to remove the illegal construction put up by him and bring the suit property to original stage within 30 days from the date of decree. If the defendant*

*fails to do so plaintiff is at liberty to execute the same through court process."*

4. This decree passed in the suit was challenged by the respondent therein before this Court in R.S.A.No.5282/2011.

5. This Court, after hearing the parties, came to the conclusion that the Senior Civil Judge, Khanapur, was justified in reversing the finding of the Trial Court in decreeing the suit. Thus, this Court confirmed the decree passed by the Senior Civil Judge, Khanapur.

6. However, an observation was made by this Court that the construction put up by the defendant would have to be removed within three months from the date of the order, failing which, the construction would stand as it is. It was also observed that since three months time was granted to the defendant to remove the structure, the defendant could also explore

the possibility of settlement, if the other side was agreeable.

7. In my view, the observations made in R.S.A.No.5282/2011 was basically to facilitate the possibility of a settlement, however, only if, the plaintiff therein agreed.

8. Obviously, the possibility of a settlement was not welcomed by the plaintiff, who proceeded to file an Execution Petition in E.P.No.108/2013. In this Execution Petition, the JDr. i.e., the present appellant filed a memo stating that he was ready and willing to settle the matter amicably in view of the order passed in R.S.A.No.5282/2011.

9. According to the appellant/JDr. the Executing Court has basically ignored this memo and has proceeded to allow the Execution Petition and directed for issuance of a delivery warrant. According to the learned counsel, the Executing Court was duty bound to

permit the parties to explore the possibility of a settlement and since this effort has not been done by the Executing Court, the impugned order was vitiated.

10. In my view, the argument of the learned counsel cannot be accepted. This Court in R.S.A. No.5282/2011, merely observed that it was open for the defendant to explore the possibility of a settlement, and that too only if the plaintiff was agreeable to the settlement. Merely because the defendant after having failed in the suit, chose to put forth an offer of settlement, that by itself, would not bind the plaintiff and compel the plaintiff to settle the matter.

11. The plaintiff having succeeded in obtaining a decree after a long drawn litigation, cannot be expected to settle at the whims and fancies of the JDr.

12. In my view, the Executing Court has rightly proceeded to order for issuance of delivery warrant and there is no infirmity in the said order which justifies

interference under Section 115 of C.P.C. The Revision is accordingly rejected.

Sd/-  
JUDGE

Naa