

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

**DATED THIS THE 28<sup>TH</sup> DAY OF FEBRUARY, 2022**

**BEFORE**

**THE HON'BLE Dr. JUSTICE H.B.PRABHAKARA SASTRY**

**WRIT PETITION No.47020 OF 2014 (GM-CPC)**

**BETWEEN:**

Siddappa  
Son of Thotada Manjappa  
Aged about 60 years,  
Resident of Honnanaviile village,  
Taluk & District Shimoga – 577201.

.. Petitioner

(By Sri. C.M. Desai, Advocate)

**AND:**

1. Manjappa,  
Son of Hanumanthappa  
Aged about 62 years,  
Resident of Honnanaviile village,  
Taluk and District Shimoga – 577201.

2. Ningappa,  
Son of Thotada Manjappa  
Wife of Kariyappa  
Aged about 43 years,  
R/o. Honnavile village,  
Taluk and District Shimoga – 577201.

.. Respondents

(By Sri. R. Gopal, Advocate for R-1;  
Notice to R-2 – dispensed with v/o.dt.15-10-2014)

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This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash both the orders dated 19-03-2014 and 04-09-2014 passed in the Execution Petition No.110/2009 on the file of the II Additional Civil Judge & JMFC, Shimoga under Annexure 'F' and 'H' by issue of writ of certiorari and to consider I.A.No.8, under Annexure G on merits; issue a writ of prohibition to prohibit the first respondent from obstructing the agricultural operations of the petitioner's execution schedule property in any manner, to issue such other writ, order or direction as may be deemed fit to issue in the circumstances of this case including an order as to cost in the interest of justice and equity.

This Writ Petition coming on for Preliminary Hearing in 'B' Group, through Physical Hearing/Video Conferencing Hearing, this day, the Court made the following:

### **ORDER**

The present petitioner who was first judgment debtor in Execution Case No.110/2009, on the file of the learned II Additional Civil Judge and JMFC, at Shivamogga,(hereinafter for brevity referred to as "the Executing Court"), has filed this writ petition, challenging the orders dated 19-03-2014 and 04-09-2014 passed in the said matter.

2. The respondent No.1 is being represented by his learned counsel. Notice to respondent No.2 is dispensed with. This matter was earlier connected with Writ Petition No.13233/2014. However, at the submission made by the

learned counsels from both side, this writ petition has now been disconnected and is taken up separately.

3. The undisputed facts are that, the present respondent No.1, as a plaintiff, had instituted a suit against the present petitioner and present respondent No.2, arraigning them as defendant Nos.1 and 2 in Original Suit No.184/1994, in the Court of the I Additional Civil Judge (Jr.Dn.) at Shimoga, for the relief of permanent injunction, seeking to restrain the defendants or anyone claiming through them from interfering in his alleged peaceful possession of the suit schedule immovable properties. The said suit came to be decreed on 28-08-2004. Aggrieved by the same, the defendants filed an appeal in R.A.No.73/2004 which came to be dismissed on its merit on 24-07-2006. Thereafter, alleging that the defendants have encroached some portion of his property and have thus committed breach of the decree, the decree holder/plaintiff filed an Execution Petition in Execution Case No.110/2009. The Executing Court observing that the possession of the

alleged encroached portion of the property has been delivered through the process of the Court by Amin to the decree holder, closed the Execution petition as decree is satisfied on 19-03-2014. Thereafter, the present petitioner who was judgment debtor No.1 (decree holder No.1) filed an application in I.A.No.8 under Section 151 of the Code of Civil Procedure, 1908 (hereinafter for brevity referred to as "the CPC"), seeking to recall the order dated 19-03-2014 and to provide an opportunity to submit their objection to the report of the process server/Amin and hear the judgment debtor on the same. The Executing Court, by its brief order dated 04-09-2014 observing that, the delivery warrant was executed on 18-03-2014 and stay was granted by the High Court on 19-03-2014 which was subsequent to delivery of the property, hence, unless there is an order for restoration of the possession, no purpose would be served by re-opening the case, closed the petition. It is challenging those two orders dated 19-03-2014 and 04-09-2014, the

present writ petition has been filed before this Court by the judgment debtor No.1 in the Executing Court.

4. Learned counsel for the petitioner in his brief argument submitted that, the Executing Court which had taken I.A.No.8 on record and had issued notice to the decree holder on the said I.A.No.8, was incorrect in not hearing the applicant/Judgment debtor No.1 on I.A.No.8, but proceeding in closing the Execution Case, again without even passing any order on I.A.No.8, either allowing it or rejecting it on merit.

5. Per contra, learned counsel for the respondent No.1 submitted that, the very reading of the order dated 04-09-2014 would go to show that I.A.No.8 has not been entertained by the Executing Court, as such, the impugned order does not warrant any interference by this Court.

6. Between the same parties, one more writ petition is pending wherein the present petitioner as a writ petitioner in the said writ petition No.13233/2014 has

challenged rejection of his I.A.No.7 seeking dismissal of the petition in view of the report of the Court Commissioner and over-ruling his main objection to the Execution petition. However, thereafter, by virtue of subsequent development, in the same execution petition, after the judgment debtor No.1 (present petitioner) filing I.A.No.8 which resulted in the outcome of the order dated 04-09-2014, the present writ petition is filed.

7. In the order dated 19-03-2014, the execution petition earlier came to be closed, observing that the decree is satisfied which observation came to be made after the decree holder submitting that the possession of the suit schedule property was delivered to him. The subsequent order dated 04-09-2014 which came to be passed subsequent to the Judgment Debtor No. 1 (present petitioner) filing I.A.No.8, the order in its entirety reads as below:

*"In the present case delivery warrant was executed on 18-03-2014 and stay was granted by the Hon'ble High Court on 19-03-2014 subsequent to*

*the delivery of the property. Hence, unless there is an order for restoration of the possession, no purpose would be served by reopening the present case.*

*Accordingly, the petition is closed.”*

Though a reading of the said order dated 04-09-2014 may give an impression that the Court was not inclined to allow I.A.No.8, but the Executing Court which had received said I.A.No.8 and ordered notice to the decree holder upon the said I.A., was required to and expected to specifically mention about either allowing the said I.A.No.8 or rejection of the said I.A.No.8. Merely because an observation is made that re-opening of the case would have served no purpose, by itself, cannot be inferred that it has in clear terms rejected I.A.No.8. Added to the same, a perusal of the order sheet also nowhere mentions that on I.A.No.8, either the decree holder was granted an opportunity to file his objections or at least the applicant (Judgment debtor No.1) was heard on the said application. Therefore, in the absence of an opportunity of hearing being given to the

applicant on I.A.No.8 and also in the absence of mentioning either allowing or dismissal of the said I.A., as submitted by the learned counsel for the petitioner, it has to be inferred that I.A.No.8 is still pending in the Executing Court. As such, in order to enable the said Court to pass a specific order on I.A.No.8 on its merit, the matter requires to be remanded by recalling the order dated 04-09-2014.

Accordingly, the writ petition is allowed in part.

The matter is remanded to the learned II Additional Civil Judge (Junior Division) at Shivamogga, with a direction to dispose of I.A.No.8, in accordance with law, at the earliest, not later than six weeks from today.

In order to avoid any further delay, both parties are directed to appear before the learned II Additional Civil Judge (Junior Division) at Shivamogga, on **14-03-2022 at 11:00 a.m.** without anticipating any fresh summons or notice.



Registry to transmit a copy of this order along with the Executing Court records, if any, pertaining to the said O.S.No.184/1994 to the concerned Executing Court, immediately.

**Sd/-  
JUDGE**

BMV\*