



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MRS JUSTICE M G UMA

WRIT PETITION NO. 33944 OF 2013 (GM-CPC)

BETWEEN:

1. H R SATYANARAYANA
S/O RANGEGOWDA
AGED ABOUT 68 YEARS
HANUGANAHALLI VILLAGE
BELUR TALUK - 571 115
HASSAN DIST

...PETITIONER

(BY SRI. JWALA KUMAR.,ADVOCATE)

AND:

1. H C SURESHA
S/O H G CHANNEGOWDA
AGED ABOUT 55 YEARS
R/O HUNUGANAHALLI
CHEEKANA HALLI POST
BELUR TALUK
HASSAN DISTRICT - 573 115
 2. H C SUNDRESHA
S/O H G CHANNEGOWDA
AGED ABOUT 53 YEARS
R/O HUNUGANAHALLI
CHEEKANA HALLI POST
BELUR TALUK
HASSAN DISTRICT - 573 115
SINCE DECEASED REP. BY HIS LRS
- 2 (A) KRISHNAKUMAR
W/O LATE H.C.SUNDAR





AGED 55
R/AT HUNAGANAHALLY
CHEEKANAHALLY POST
BELUR TALUK

2 (B) SHRUTHI
W/O PHANEESH
AGED 32
R/AT HUNAGANAHALLY
CHEEKANAHALLY POST
BELUR TALUK

2 (C) SWATHI
D/O LATE H.C.SUNDAR
AGED 26
R/AT HUNAGANAHALLY
CHEEKANAHALLY POST
BELUR TALUK

3. H B NAGARAJU
S/O LATE BHADRE GOWDA
AGED ABOUT 65 YEARS
R/O HUNUGANAHALLI
CHEEKANA HALLI POST
BELUR TALUK
HASSAN DISTRICT - 573 115

4. H B KESHAVEGOWDA
SINCE DIED BY HIS LRS

4 (A)SMT ASHA
AGED ABOUT 50 YEARS
W/O LATE KESHAVEGOWDA
R/O HUNUGANAHALLI
CHEEKANA HALLI POST
BELUR TALUK
HASSAN DISTRICT - 573 115

4 (B)CHIRAG



S/O LATE KESHAVEGOWDA
AGED ABOUT 27 YEARS
R/O HUNUGANAHALI
CHEEKANA HALLI POST
BELUR TALUK
HASSAN DISTRICT - 573 115

4 (C)ANURAG
S/O LATE KESHAVEGOWDA
AGED ABOUT 21 YEARS
R/O HUNUGANAHALI
CHEEKANA HALLI POST
BELUR TALUK
HASSAN DISTRICT - 573 115

5 H B KRISHNA MURTHY
S/O LATE BHADRE GOWDA
AGED ABOUT 60 YEARS
R/O HUNUGANAHALI
CHEEKANA HALLI POST
BELUR TALUK
HASSAN DISTRICT - 573 115

6 H B NAGAVENI
W/O B M LINGE GOWDA
AGED ABOUT 55 YEARS
BAGHEMANE - 577 101
CHIKKAMAGALUR TALUK

7 H B PADMA @ PADMAKSHI
W/O JAYARAM
AGED ABOUT 50 YEARS
YADAVAGIRI
SHILPA PROVISIONS STORES
MYSORE - 570 023

8 H B KASTURI
S/O B L CHANDRE GOWDA
AGED ABOUT 47 YEARS



COFFEE PLANTER
JAGARI VILLAGE - 577 101
CHIKKAMAGALUR

...RESPONDENTS

(BY SRI. BHARGAV G.,ADVOCATE
SRI. SOMASHEKARA K M.,ADVOCATE FOR R1, R4(B) AND R5
R1, R3, R4(A), R5-H/S V/O DATED 20.04.2016
R6 -H/S V/O DATED 22.01.2018
R2(A),(B), R8 -SERVED-UNREPRESENTED
R2(C), R4(C), R(7)-H/S V/O DATED 01.02.2019)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER/JUDGEMENT DATED.8.2.2013, PASSED IN EX.NO.181/2008 BY THE COURT OF SENIOR CIVIL JUDGE, BELUR VIDE ANNEXURE-E. DIRECT THE EXECUTING COURT BELOW TO PASS AN APPROPRIATE ORDER IN TERMS OF THE DECREE PASSED IN R.A.14/1990 AND ETC.,

THIS WRIT PETITION COMING ON FOR HEARING THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

The decree holder in Execution No.181 of 2008 on the file of learned Senior Civil Judge, Belur, is impugning the order dated 08.02.2013 dismissing the execution case, as the same is not maintainable.

2. Heard Sri. Jwala Kumar, learned counsel for petitioners and Sri. Bhargav G and Sri. Somashekara K M, learned counsel for respondent Nos.1, 4(b) and 5 . Perused the materials on record.



3. Learned counsel for the petitioner contended that the petitioner had filed the suit OS No. 58 of 1978 before the Trial court seeking partition and separate possession of his share in the schedule properties. The suit came to be decreed vide judgement and decree dated 07.06.1986. The respondents herein being the defendants challenged the said judgment and decree by preferring an appeal before this Court in RFA No. 536 of 1986. In view of the change in jurisdiction of the case, the matter was remitted to the District Court and re-numbered as RA No. 14 of 1990. When the matter was pending before the Appellate Court, it thought fit to refer the dispute to the Arbitrator for amicable settlement between the parties. Accordingly, the parties have amicably settled the dispute and the consent award dated 04.07.1996 came to be passed. The said award was placed before the First Appellate Court, which passed the decree based on the said award on 13.04.1999.

4. Learned counsel submitted that since RA No.14 of 1990 was pending before the First Appellate Court, the parties have not chosen the Arbitrator for settlement of their dispute under the Arbitration and Conciliation act. But as a mode of



ADR, the Court referred the dispute to the Arbitrator for amicable settlement and accordingly, the consent award was passed on 04.07.1996. The said award was accepted by the First Appellate Court and a decree was passed on 13.04.1999. As per the decree, certain sum of money was due to be paid to the decree holder. The portion of agricultural land and three sites/houses were allotted to the share of the plaintiff. Therefore, to execute the said decree, Execution No.181 of 2008 was filed.

5. Learned counsel further submitted that the respondents who are the defendants in the suit, raised objections that the arbitral award was not drawn on the stamp paper and it was not registered and therefore, the same cannot be executed before the Court. The said objections were considered by the Executing Court and passed the impugned order. Therefore, the decree holder is before this Court.

6. Learned counsel submitted that since the First Appellate Court in RA No.14 of 1990 passed the decree on 13.04.1999, the award merges with the decree of Court. Moreover, the required duty is already paid by the decree



holder on 08.11.2012. Therefore, the objections raised by the judgment debtor is not sustainable. Learned counsel placed reliance on the decision of the Hon'ble Apex Court in ***Parmeshwar Das Gupta v/s State of UP and another 1996***¹, in support of his contention that the Executing Court cannot go beyond the order or decree under execution. It gets jurisdiction only to execute the decree in accordance with law. Therefore, he contends that the Executing Court travelled beyond the decree to hold that the same is not executable. Hence, he prays for allowing the petition.

7. Per contra, learned counsel for the respondents submitted that, admittedly the dispute was referred to the Arbitrator. He passed the award which was required to be registered in accordance with law. The stamp duty payable on the award was paid after the period of limitation as provided under Article 136 of the Limitation Act. When the award passed by the Arbitrator was neither stamped nor registered, the same is not liable for execution. He places reliance on the decision of the Hon'ble Apex Court in ***Lachhman Dass Vs Ram***

¹ SCC 728



Lal and Another² to contend that, when the value of the property which is the subject matter of award was more than Rs.100/- and when it is not registered as required under Section 17 of the Registration Act and when it was not duly stamped, the award cannot be executed. The Trial Court on proper appreciation of the materials on record rightly dismissed the execution case as not maintainable. The order passed by the Executing Court do not call for any interference. Therefore, he prays for dismissal of the petition.

8. The admitted facts of the case is that, the plaintiff filed OS No.58 of 1978 for partition and separate possession. The suit came to be decreed and the defendants/respondents challenged the same by filing Regular First Appeal before this Court, which was thereafter transferred to the First Appellate Court in RA No. 14 of 1990. The decree passed by the First Appellate Court discloses that, the dispute was referred to the Arbitrator as the Court found it more appropriate for reconciliation between the parties, than for a technical decision on merits of the case. Therefore, both the parties were called upon to address their grievances before the Arbitrator. The

² (1989) 3 SCC 99



reconciliation was held between the parties and as agreed by both the parties, the terms of reconciliation was set out in the form of an award and the same was placed before the First Appellate Court. The First Appellate Court in RA No. 14 of 1990 taken the terms of arbitral award and accepted the same. It was further ordered that the appellant shall pay the fee to the Arbitrator. Thus, the Court drawn the decree on 13.04.1999 in terms of the award passed by the arbitrator.

9. Admittedly, the respondents have not raised any objections before the First Appellate Court and accepted the terms of the decree. It is also not the contention of the respondents that they had ever invoked Section 11 of the Arbitration and Conciliation Act of 1940 or they have invoked any other provisions of the Act in the given case.

10. Learned counsel for the respondents places reliance on the decision of the Hon'ble Apex Court in **Lachhman Das** (*supra*), to contend that unless the arbitral award is registered and final decree was drawn on required stamp paper, the same cannot be accepted. In the said case, there was a dispute between two brothers and they have referred it to the



Arbitrator for settlement. The Arbitrator has passed the award and the said award was placed before the Civil Court. The same was challenged before the Hon'ble Apex Court. The Hon'ble Apex Court considered various provisions of law under the Arbitration and Conciliation Act and formed an opinion that when the award affecting or purporting to affect the right, title or interest in immovable property, it must be registered under Section 17(1)(e) of the Registration Act and the unregistered award in such a case cannot be looked into by the Court, when the award is filed under Section 11 of the Arbitration and Conciliation Act of 1940.

11. The facts and circumstances in the present case is entirely different. In the present case, as I have already noted, none of the parties have invoked any of the provisions of the Arbitration Act, but it was the decision of the First Appellate Court to refer the dispute before the Arbitrator and accordingly, the Arbitrator has conciliated between the parties and passed the award which was placed before the First Appellate Court. The intention of the parties was not to settle the dispute before the Arbitration and there was no appointment of Arbitrator to



pass the award but it was for the purpose of settling the dispute between the parties amicably out of Court.

12. The very fact that the appeal in RA No.14 of 1990 was pending before the First Appellate Court, where the Arbitrator was appointed without invoking Section 11 of the Act for reconciliation and the award in question was placed before the First Appellate Court. The First Appellate Court accepted the terms of reconciliation and passed the decree in question. Under such circumstances, the decision relied on by the learned counsel for the respondents cannot be made applicable to the facts of the present case.

13. When the Civil Court passes the decree granting the relief of partition and separate possession and the decree holder seeks the aid of Executing Court for executing the decree, it is settled position of the law that the Executing Court cannot go beyond the decree of Civil Court. Even if the award passed by the Arbitrator is to be considered as an award as contended by the respondents, it is to be noted that the First Appellate Court in RA No.14 of 1990 accepted the award and passed a decree, thereby the award merges with the decree in



question. Under such circumstances, it has jurisdiction only to execute the decree in accordance with the provisions of Order 21 of CPC and nothing more than that when First Appellate Court passes a decree and admittedly, the decree holder paid the required stamp duty on the decree drawn by the Civil Court, I am of the opinion that the Executing Court should have executed the decree without going into the correctness of the same as it is beyond its jurisdiction.

14. I have gone through the impugned order passed by the Executing Court, which has traveled beyond its jurisdiction to give a finding that the decree passed by the First Appellate Court is an arbitral award and the same cannot be executed. Hence, I am of the opinion that the same requires interference by this Court.

15. Hence, I proceed to pass the following

ORDER

- (i) The writ petition is ***allowed***.
- (ii) The order dated 08.02.2013 passed in Execution No.181 of 2008 on the file of learned Senior Civil



Judge, Belur, is hereby set aside. Consequently, Execution case No. 181 of 2008 is restored on file.

- (iii) Both the parties in this writ petition are directed to appear before the Executing Court on 06.02.2024, upon which the executing Court shall dispose off the case in accordance with law.

**Sd/-
JUDGE**

SPV
List No.: 1 SI No.: 2