

**IN THE COURT OF THE II ADDL. CIVIL JUDGE &
J.M.F.C., PANDAVAPURA**

DATED THIS THE DAY 16th DAY OF MARCH 2021

Present :

Smt. Yashashwini Ameen B. M.A., LL.M.,
II Addl. Civil Judge & J.M.F.C.,
Pandavapura

F.D.P 1/2018

Petitioner/s: Canara Bank, A body corporate
constituted under the Banking
Companies (Acquisition and
Transfer of undertakings) Act 1970
having its Head office No.112, J.C.
Road, Bangalore and one of its
branch at Sindhaghatta village,
Krishnarajapet taluk, Mandya
district, r/p by its branch Manager
and Principal officer

(By Sri. BLD, Adv.,)

V/s

Respondent/s:

1. Chikkathammegowda s/o late
Kullegowda, aged about 72
years,

2. Jayaramegowda s/o
Chikkathammegowda, aged
about 43 years,
3. S.Ramesh s/o
Chikkathammegowda, aged
about 40 years,

All are residing at Halebeedu
village, Melukote hobli,
Pandavapura taluk,
Mandya district.

(By Sri. LCP, Adv.,)

ORDER

This final decree proceeding arises out of the preliminary decree passed in O.S.166/2014 as per the judgment and preliminary decree dated 9.12.2015 passed in the said suit.

2. The facts as set out in the petition are as follows:

The Petitioner had filed suit against the Respondents in O.S.166/2014 for recovery of money. The said suit came to be decreed on 9.12.2015 directing the Defendants (present Respondents) to pay the decree amount of Rs.3,00,890-00/- along with future interest at the

rate of 6% per annum from the date of suit till the date of realization.

3. Further, it is the say of the Petitioner that in spite of passing of such decree, the Defendants (present Respondents) have not paid the decree amount. Therefore, this final decree proceeding is filed.

4. After the institution of this FDP, the same was registered and notices were issued and duly served on the Respondents. The Respondents have appeared before the court through their counsel, but they have not filed any objection. Therefore, there is nothing on record to disbelieve the say of the Petitioner.

5. The petitioner examined himself as Pw1 and filed his affidavit in lieu of examination in chief by reiterating the entire petition averments. Besides, the Petitioner has produced the certified copy of the preliminary decree passed in O.S.166/2014 which is marked as Ex.P1. This order passed in O.S.166/2014 shows that the suit of the Plaintiff

was decreed with costs. Further, the said decree copy shows that the Plaintiff is entitled to recover a sum of Rs.3,00,890/- along with costs and interest at the rate of 6% per annum from the date of suit till the date of realization.

6. It must be noted that a perusal of the decree shows that as per the command of the decree the Respondents were required to pay the decree amount at the earliest. But, the record shows that the Respondents have not paid any amount to the Petitioner even during the pendency of the present petition. Thus, it becomes clear that there is a failure on the part of the Respondents. Hence, the Petitioner is justified in filing this FDP proceeding.

7. Besides, as per the preliminary decree the property bearing Sy.No.363/1 measuring 1.29 acres situated at Halebeedu village, Melukote Hobli, Pandavapura Taluk and Sy.No.32/2P2 measuring 1.19 acres situated at Halebeedu village, Melukote Hobli, Pandavapura Taluk and was offered as security for the said loan

transaction. Further, again I repeat, the amount due as per the decree is Rs. 3,00,890/- together with interest at the rate of 6% per annum.

8. As the Respondents have not paid the amount, in this case, the final decree is to be drawn as prayed for by the Plaintiff (Petitioner). Besides, even in this FDP also, the Respondents have not resisted the petition. Thus, it gives an impression that the Respondents have conceded the contents of this petition.

9. If all the above factual features are considered together, it can be stated that the Petitioner has made out acceptable grounds so as to draw the final decree as prayed for. Hence, I pass the following-

ORDER

The Petition filed by the Petitioner is allowed with costs. There shall be a final decree in favour of Petitioner and against the Respondents, directing the sale of schedule properties. There shall be sale

of suit schedule properties. The sale proceedings of suit properties shall be utilized towards the loan amount.

In case the sale proceeds is deficit to clear the entire loan due, the Petitioner can very well recover the same from the Respondents. The Respondents are liable to pay the balance amount, if any. Further, it is also made clear that if the sale proceeds is excess than the amount required to clear the entire loan due, then, the Respondents are entitled for such balance amount.

Draw final decree in the above terms.

(Dictated to the Stenographer, computerized by him, revised and corrected and then pronounced the open Court, on this the 16th day of March 2021)

Smt. Yashashwini Ameen B.

II Addl. Civil Judge & J.M.F.C.,
Pandavapura

APPENDIX

List of witnesses examined on behalf of petitioner:

P.W.1: Mahesh Kuma

List of documents marked on behalf of Petitioner:

Exbt.P.1: Certified copy of plaint in O.S.166/2014

List of witnesses examined and documents marked
on behalf of respondent/s – Nil-

Smt. Yashashwini Ameen B.

II Addl. Civil Judge & J.M.F.C.,
Pandavapura

**Orders pronounced in the open court
vide separate Orders**

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Draw final decree in the above terms.

Smt. Yashashwini Ameen B.

II Addl. Civil Judge & J.M.F.C.,
Pandavapura