

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN
CIVIL MISCELLANEOUS APPEAL NO: 61 of 2025

JUDGMENT:- *(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri Kiran Kumar Vadlamudi, learned counsel for the appellant and Sri Damaraju Madhusudhan Vijay Kumar, learned counsel for respondent Nos.1 to 7.

2. This appeal has been filed by the appellant/judgment debtor No.1 under Order 43 Rule 1 of the Code of Civil Procedure, 1908, (in short 'CPC') challenging the order dated 08.08.2024 passed in E.P.No.226 of 2023 in

Lok Adalat Award No.4199/2021 in O.S.No.166 of 2017
Lok Adalat Award No.4285/2021 in O.S.No.172 of 2017
Lok Adalat Award No.4284/2021 in O.S.No.173 of 2017
Lok Adalat Award No.4283/2021 in O.S.No.174 of 2017
Lok Adalat Award No.4286/2021 in O.S.No.175 of 2017
Lok Adalat Award No.4287/2021 in P.L.C.No.174 of 2021

3. The respondents/plaintiffs filed the aforesaid original suits, in which Lok Adalat awards were passed in their favour, on 16.11.2021.

4. For execution of the awards, the decree holders filed E.P.No.226 of 2023 before the III Additional District Judge, Nellore, under Order 21 Rule 34, seeking a direction for the judgment debtors to execute a registered sale deed for the specified extent, in accordance with the decree. However, the appellant/judgment debtor No.1 and respondent No.8 (judgment debtor No.2) did not come forward to execute the sale deed, inspite of repeated requests made by the respondents/plaintiffs after the award.

5. The appellant/judgment debtor No.1 filed a counter affidavit/objection, raising various pleas including related to instances that occurred prior to the passing of the award.

6. An Advocate-Commissioner was also appointed to identify the land in question as per the schedule appended to the award and against his report, objections were also filed.

7. The learned Execution Court framed the following issue for consideration:

“Whether the D.hrs are entitled for getting the registered sale deed from J.drs 1 and 2 as prayed by him ?”

8. The Execution Court rejected the appellant's objection and allowed E.P.No.226 of 2023 by order dated 08.08.2024, directing

judgment debtors 1 and 2 to execute registered sale deed in favor of the decree holders in respect of the E.P. schedule property, i.e., 150 ankanams of site, as specified in the schedule. The Execution Court further, fixed 13.08.2024, for submitting the draft sale deed.

9. Challenging the order dated 08.08.2024, the present appeal under Order 43 Rule 1 CPC has been filed.

10. The learned counsel for the appellant submitted that, in view of Sub-Rule (1) of Rule 34 of Order 21 CPC, the decree holder, while filing the execution petition, must have submitted the draft sale deed to the Execution Court, and objections to such draft sale deed should have been invited. After considering and deciding those objections, the Execution Court should have proceeded. But, the decree holders did not file any draft sale deed. So, the execution Court lacked jurisdiction to proceed with the execution petition, which warranted its rejection, on this ground alone.

11. Learned counsel for the appellant placed reliance on the following cases in support of his contentions:

1). *P.Venkanna Chetti and another V. B.Apparao Naidu*¹

2). *Brajendra Singh Yambem V. Union of India (UOI) and Others*²

¹AIR 1959 AP 666

12. Learned counsel for the respondents submitted that it is not mandatory to submit the draft of the document (sale deed) along with the execution petition under Order 21 Rule 34 CPC.

13. Learned counsel for the respondent further submitted that, subsequent to the order dated 08.08.2024, on 10.02.2025, the appellant/judgment debtor agreed to execute sale deeds in favour of the decree holders and recording the same, the Execution Court passed an order directing them to execute a registered sale deed as per the draft sale deed, which was filed by the decree holders *vide* order dated 08.08.2024, by 13.02.2025. On which date, the Execution Court waited for the judgment debtors for registration, but they did not turn up. So, the registration was postponed to 14.02.2025, and as they again failed to appear, the Execution Court, executed a sale deed bearing No.1511 of 2025, dated 14.02.2025, before the Sub-Registrar, Nellore, in favour of the decree holders for a value of Rs.1,26,00,000/-, with stamp duty of Rs.9,46,500/-. Each decree holder also paid the requisite amount of Income Tax. Thus, the order dated 08.08.2024, under challenge, has already been implemented and the decree has been executed, but the judgment debtor, has not disclosed these facts by filing additional affidavit, and thus suppressed the relevant facts.

²(2016) 9 SCC 20 equivalent to AIR 2016 SC 4107

14. Learned counsel for the respondent placed reliance in the following cases :

1. ***Drashan Kaur V. Gurdial Singh***³
2. ***Madurai Coats Public Servants V. M/s.Madurai Coats Limited***⁴

15. A counter affidavit to the above effect, annexing copy of the relevant orders, has also been filed.

16. The appellant has not filed any reply affidavit to rebut the contentions raised in the counter affidavit. It has not been disputed that subsequent to the impugned order, a sale deed has been executed by the Execution Court in favour of the decree holders in execution proceedings.

17. We have considered the aforesaid submissions and perused the material on record.

18. The point for consideration is :

"Whether it is mandatory to file a draft of the document (sale deed as in the present case) along with the execution petition, for the execution of decree for specific performance of

³ AIR 1990 (P &H) 231

⁴ S.A.No.(MD).No.932 of 2007, decided on 16.10.2015

contract to execute the sale deed, under Order 21 Rule 34 CPC ?”

19. Order 21 Rule 34 CPC reads as under :

“34. Decree for execution of document, or endorsement of negotiable instrument.

(1) Where a decree is for the execution of a document or for the endorsement for a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor object to the draft, his objections shall be stated in writing within such time, and the court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely, “C.D., Judge of the Court of (or as the case may be), for A.B. in suit by E.F. against A.B.” and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) (a) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the court as may be authorized in this behalf by the Court, shall cause the document to be registered in accordance with such law.

(b) Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.

(c) Where the Court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration.”

20. A bare reading of the aforesaid provision shows that where a decree is for the execution of a document or for the endorsement for a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may

prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court. Upon delivery of the draft document to the Court, the Court shall arrange for it to be served on the judgment debtor along with a notice inviting any objections within a specified timeframe. If the judgment debtor raises objections, those will be considered either by modifying the draft or making necessary alterations. The decree holder shall then submit a revised copy of the draft, incorporating any changes as directed by the Court, in accordance with the applicable law in force.

21. The learned counsel for the appellant emphasized that the preparation and submission of a draft document at the time of filing execution petition is a requirement under Order 21 Rule 34 and in the absence of any draft document, the Execution Court shall have no jurisdiction.

22. In our view, the above submission lacks merit and deserves rejection.

23. Sub-rule (1) of Rule 34 of Order 21 CPC uses the expression 'may prepare a draft'. The expression 'may' is ordinarily and generally directory, and not mandatory. Sometimes 'may' may be read as 'shall', but not generally. Unless and until the context or legislative intent clearly indicates or necessitates such reading to give effect to the legislative intent to achieve the object of the enactment

or the particular provision, 'may' may be read as 'shall'. Otherwise, it is to be given its general and ordinary meaning, being directory.

24. In ***Hameed Joharan (Dead) and Others V. Abdul Salam (dead) by Lrs., and Others***⁵ the Hon'ble Apex Court at paragraph No.20 held as under :

*"20. The W.B. Essential Commodities Supply Corpn. decision has been rather cautious in recording certain situations in which a decree may not be enforceable on the date it is passed (emphasis supplied). It is thus not a pronouncement of law as such but an exception recorded in certain situations, the words "may not be" as emphasized are rather significant. The **word "may" in common acceptance means and implies "a possibility" depicting thereby availability of some fluidity and thus not conclusive**) This aspect of the matter is required to be clarified by reason of the observations as laid down in the third situation (noticed above) needless to record that the third situation spoken of by this Court in the decision last noted is obviously by reason of the judgment of this Court in Lokhande cases."*

25. In ***State (Delhi Admn) V. I.K.Nangia and Another***⁶, it was observed that the word 'may' implies what is optional.

⁵ (2001) 7 SCC 573

⁶ (1980) 1 SCC 258

26. In ***Sahodara Devi (Smt.) V. Government of India***⁷, it was observed that the word 'may' is used to grant a discretion and not to indicate a mandatory direction.

27. In ***Bachahan Devi v. Nagar Nigam, Gorakhpuru***⁸, the Hon'ble Apex Court held that the use of the word 'may' would not by itself show that the provision is directory. In some cases, the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend mandatory force. In order, therefore, to interpret the legal import of the word 'may', the Court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. The Hon'ble Apex Court held that the ultimate rule in construing auxiliary verbs like 'may' and 'shall' is to discover legislative intent, and use of words 'may' and 'shall' is not decisive of its discretion or mandates. The use of the words 'may' and 'shall' may help Courts in ascertaining legislative intent without giving to either a controlling or a general rule, the word 'may' is determining effect. It was held that as permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word 'shall', which ordinarily is imperative as it imposes a duty.

⁷ (1972) 3 SCC 156

⁸ (2008) 12 SCC 372

28. In ***Bachahan Devi*** (supra) the Hon'ble Apex Court, referred to its earlier judgment in ***Ganesh Prasad Sah Kesari Gupta***⁹, in which it was observed and held that where the legislature uses two words 'may' and 'shall' in two different parts of the same provision, prima facie, it would appear that the legislature manifested its intention to make one part directory and another mandatory.

29. In ***State of Bihar Vs. Bihar Rajya Bhumi Vikas Bank Samiti***¹⁰, the Hon'ble Apex Court referred to its judgment in ***Salem Advocate Bar Assn. V. Union of India***¹¹, in which it was held that the use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory.

30. In Sub-rule (1) of Rule 34 of Order 21 CPC, the expression 'may' has been used, whereas in Sub-rule (2) of Rule 34 of Order 21 CPC, the expression used is 'shall'. We are of the view that under the same rule, different expressions 'may' and 'shall' have been used respectively. They would therefore, connote the different meaning in Sub-rule (1) and Sub-rule (2). The intention of the legislator is clear, that 'may' in Sub-rule (1) is to be considered directory and 'shall' in Sub-rule (2) as mandatory. It therefore, cannot

⁹ (1985) 3 SCC 53

¹⁰ (2018) 9 SCC 472

¹¹ (2005) 6 SCC 344

be said that the expression 'may' in Sub-rule (1) is to be read as 'shall'. The expression 'may' in Sub-rule (1) is to be read as 'may' i.e., as directory only.

31. The filing of a draft document under Sub-rule (1) of Rule 34 of Order 21 CPC to be filed along with petition for the execution of a decree, is not mandatory but merely directory. It is optional. However, if the decree holder chooses to file a draft document, either initially or at a later stage of execution proceedings, the Court shall follow the procedure under Rule 34. After a draft is filed, the Execution Court shall serve the copy of the draft document and invite objections and in the light thereof, if objections are filed, shall approve or alter the draft and shall take further steps as per Rule 34.

32. In the present case, since no draft was initially filed, there was no requirement for the Execution Court to follow the procedure under Rule 34. However, after the order dated 08.08.2024, when the Court directed the decree holder to submit the draft sale deed and the same was filed, the Execution Court allowed the judgment debtor to file objections.

33. In **Drashan Kaur** (supra) on which the learned counsel for the respondent placed reliance the Punjab & Haryana High Court held that the provisions of O.21, R.34 CPC must be held to be merely

directory and non-compliance with them will not vitiate the sale deed executed under orders of the court.

34. In ***Drashan Kaur*** (supra), It was further held that even if the draft of the sale deed was not served and the opportunity to file objections was denied to the Judgment debtor, that would not vitiate the sale deed executed, unless the judgment debtor showed the prejudice caused to him. In the present case, the subsequent events show that when the draft of sale deed was filed, pursuant to the order of the Execution Court dated 08.08.2024, the opportunity was granted to the judgment debtor to file objections.

35. The ***Madurai Coats Public Servants*** (supra) only makes mention of ***Drashan Kaur*** (supra) in the arguments of the learned counsel therein, and does not decide any question of law on that aspect.

36. ***P.Venkanna Chetti*** (supra), cited by the appellant's counsel is distinguishable on facts. There, the decree holder prepared a draft document and submitted to the Court, which ordered service thereof on the judgment debtor, who filed objections. The matter was brought up for hearing. The Execution Court directed the judgment debtor to specifically point out the objectionable clauses and the draft was handed over to him. He, instead of complying with the Court's direction, submitted an entirely new draft sale deed. The Court, without

considering the objections raised by the judgment debtor, accepted the draft sale deed filed by the decree holder and rejected the judgment debtor's new draft. So, it was held that if the judgment debtor objected to the draft sale deed, his objections must have been recorded in writing, and the Execution Court must have either modified or approved the draft sale deed accordingly. But, without considering the objections raised by the judgment debtor, order could not be passed. The present case is different. The challenge is to the order dated 08.08.2024, by which, the decree holder was directed to submit draft sale deed. The ground argued/raised is different. It is not the present case that the objections filed against the draft sale deed submitted pursuant to order dated 08.08.2024 were not considered.

37. In ***Brajendra Singh Yambem*** (supra), also cited by the learned counsel for the appellant, the Hon'ble Apex Court reiterated that the well established principle of law is that if the manner of doing a particular act is prescribed under any statute then the act must be done in that manner or not at all. There cannot be any dispute. Such proposition of law is well established. However, in the present case, there is no violation of such principle. The procedure prescribed under Order 21 Rule 34 has not been violated by the Execution Court.

38. Therefore, we do not accept the submission of the learned counsel for the appellant that the execution application was not maintainable without draft sale deed or that the Execution Court had no jurisdiction.

39. On the point framed, we hold that, filing of draft document i.e., sale deed, as in this case, along with Execution Petition, for execution of the decree under order 21 Rule 34 CPC, is only directory and not mandatory.

40. Thus considered, we do not find any illegality in the order under challenge.

41. The Civil Miscellaneous Appeal lacks merits, and is dismissed.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

Date : 10.04.2025.

Note: L.R. copy be marked

B/o.

RPD.

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN**

(DISMISSED)

CIVIL MISCELLANEOUS APPEAL NO: 61 of 2025

Date:

Note: L.R. copy be marked

B/o.
RPD.

*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**
***THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN**
+ CIVIL MISCELLANEOUS APPEAL NO: 61 OF 2025

% 10.04.2025

T.K.Narayana Murthy

.....Appellant

And:

\$ Harigopal and others

....Respondents.

!Counsel for the appellant : Sri Kiran Kumar Vadlamudi

^Counsel for the respondents 1 to 7 : Sri Damaraju Madhusudhan Vijay Kumar

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>Head Note:

? Cases referred:

1. AIR 1959 AP 666
2. (2016) 9 SCC 20 equalent to AIR 2016 SC 4107
3. AIR 1990 (P &H) 231
4. S.A.No.(MD).No.932 of 2007, decided on 16.10.2015
5. (2001) 7 SCC 573
6. (1980) 1 SCC 258
7. (1972) 3 SCC 156
8. (2008) 12 SCC 372
9. (1985) 3 SCC 53
10. (2018) 9 SCC 472
11. (2005) 6 SCC 344

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

* * * *

CIVIL MISCELLANEOUS APPEAL NO: 61 of 2025

T.K.Narayana Murthy

.....Appellant

And:

Harigopal and others

....Respondents.

DATE OF JUDGMENT PRONOUNCED: 10.04 .2025**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN**

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| 1. <i>Whether Reporters of Local newspapers may be allowed to see the Judgments?</i> | Yes/No |
| 2. <i>Whether the copies of judgment may be marked to Law Reporters/Journals</i> | Yes/No |
| 3. <i>Whether Your Lordships wish to see the fair copy of the Judgment?</i> | Yes/No |

RAVI NATH TILHARI,J

CHALLA GUNARANJAN,J