

**R. C. A. No. 02/2023**

Kishor Vrs. Railbuwa & Ors.

CNR No. MHAK05-000012-2023

**ORDER BELOW EXH.10**

[Dtd. 04<sup>th</sup> day of February, 2025]

01. The respondent through this application has challenged maintainability of present appeal on the ground that, the order challenged by appellant in the present appeal is not decree and the said adjudication is not under Order 21, Rule 97 of C.P.C.

02. It is the contention of respondent that, the objector initially has moved an application under Section 47 of C.P.C. in the said execution petition and later on get withdrawn the same. Thereafter, he again moved application under Order 21, Rule 97 of C.P.C. which is not maintainable as the objector is neither Decree Holder nor Purchaser of suit property in execution. Therefore, whatever order passed while deciding said application cannot be treated as adjudication under Order 21, Rule 101 of C.P.C. and therefore, the same cannot be treated as decree under Rule 103 of Order 21 of C.P.C. Therefore, appeal is not maintainable against the said order and therefore he prayed to reject the same.

03. Per contra, the appellant has strongly opposed the application on the count that, he was not party to the concern suit and therefore the decree passed cannot bind him. He got acquainted with said decree when the possession warrant in execution was

attempted to be executed. Therefore, as he is stranger to decree and as going to be dispossessed from suit property in execution, he moved application under Order 21, Rule 97 r/w. 101 and Section 151 of C.P.C. He has no other remedy to get adjudicated issue with regard to his title, right or interest over the suit property. Therefore, the adjudication made while deciding the said application is the question determined under Rule 101 of Order 21 of C.P.C. and the same amounts to decree as per Rule 103. Therefore, an appeal is maintainable against said decree.

04. The Ld. Counsel for appellant in order to buttress his submission, has relied on the ratio led down by Hon'ble Apex court in the case of "*Brahmdeo Choudhary Vrs. Rishikesh Jaiswal*" [AIR 1997 SC 856]. In said case, the Hon'ble Apex court while dealing with provisions of Order 21, Rule 97 and 99 of C.P.C. has specifically enunciated that, it is not always necessary for objectionist to wait till dispossession and if he is vigilant about his right, he can raise objection and ask for adjudication of his right, title or interest over the suit property by invoking provisions of Order 21, Rule 97 of C.P.C.

05. The Ld. Counsel for appellant has further invited my attention to the ratio led down by Hon'ble Apex Court in the case of "*S. Rajeswari Vrs. S. N. Kulasekaran & Ors., [Appeal no. 1417/2001 dtd. 29.03.2006]*". In said case, the Hon'ble Apex Court considered the actual adjudication made instead of focusing on the provision

mentioned and held that, the adjudication under Order 21, Rule 98 or Rule 100 of C.P.C. is deemed decree and appeal under Rule 103 is maintainable.

06. Keeping in the mind the said settled principle of law, I have minutely scrutinized the record. It clearly appears that, the present appellant / objector was not party to the concern suit and he raised objection under Order 21, Rule 97 of C.P.C. when the possession warrant sought to be executed in concern execution proceeding. Though, Order 21, Rule 97 of C.P.C. speaks that, the said provision can be availed by Decree Holder or Purchaser in execution, but considering the ratio led down by Hon'ble Apex Court in the case of "*Brahmdeo Choudhary*" it can be said that the stranger is not prohibited from raising the objection prior to dispossession and seeking to decide his right, title and interest with regard to suit property by invoking said provision. Considering the said settled principle of law, the trial court has observed that the application raising objection is maintainable under Order 21, Rule 97 of C.P.C. and finally decided the same by recording the evidence. Therefore, it is sufficient to show that, the adjudication made by deciding the said application is under Order 21, Rule 98 and the question of title of objector over the suit property is determined under Rule 101. Therefore, it is sufficient to show that, the said adjudication is made by invoking the said provision and therefore, as per Order 21, Rule 103 of C.P.C. the same amounts to deemed decree and therefore the appeal is absolutely maintainable against the same.

07. Moreover, it cannot be ignored that, after filing of appeal, notices were issued to respondent and pursuant to it, they appeared before the court. Now, the appeal needs to be fixed for final hearing Order 41, Rule 16 of C.P.C. The stage of Order 41, Rule 11 of C.P.C. is already crossed and there is no any provision to reject the appeal without hearing under Order 41, Rule 16 of C.P.C. on the ground of maintainability. In fact, the said issue also needs to be decided while deciding the appeal finally and therefore the present application is not tenable in the eyes of law.

08. Hence in view of above discussion I am of the considered opinion that the present application is devoid of merit and liable to be rejected. Hence the order:-

### **ORDER**

The application stands rejected.

Date : 04.02.2025.  
Akot.

( Rahul A. Shinde )  
District Judge-2, Akot.

**R. C. A. No. 22/2016**  
Rameshwar & Ors. -Vrs.-  
Annapurnabai & Ors.  
CNR No. MHAK05-000215-2016

**ORDER BELOW EXHIBIT 11**  
(Dated 04<sup>th</sup> day of February, 2025)

Perused the application. The appellant has prayed to condone delay caused to bring legal heirs of deceased respondent no. 2-B on the record. It appears that, the delay caused is not deliberate and in the interest of justice the said needs to be condoned. Hence the order.

**ORDER**

- 1 The application Exh. 11 is allowed.
- 2 The delay caused for bringing legal heirs of deceased respondent no. 2-B on the record is hereby condoned.

Date : 04.02.2025.  
Akot.

( Rahul A. Shinde )  
District Judge-2, Akot.

**R. C. A. No. 22/2016**

Rameshwar & Ors. -Vrs.-  
Annapurnabai & Ors.

CNR No. MHAK05-000215-2016

**ORDER BELOW EXHIBIT 18**

( Dated 04<sup>th</sup> day of February, 2025)

Perused the application. There is no dispute with regard to fact of death of respondent no. 2-B and also with regard to his legal heirs. Therefore as right to sue survive and in the interest of justice the legal heirs of deceased respondent no. 2 needs to be brought on record. Hence the order.

**ORDER**

- 1 The application at Exh. 18 is allowed.
- 2 The appellant is permitted to bring legal heirs of deceased respondent no. 2-B on the record as prayed.
- 3 The appellant to carry out necessary amendment within 14 days.

Date : 04.02.2025.  
Akot.

( Rahul A. Shinde )  
District Judge-2, Akot..

## Certificate

I affirm that the contents of this P.D.F. file are same word for word as per original order.

Name of Steno : R. K. Bore, Stenographer, Grade-I.  
Court Name : District Judge-2, Akot.  
Date of Order/Judg. : 04.02.2025  
Signed by Presiding on : 04.02.2025  
Uploaded on : 06.02.2025