

MHAK050000122023



Received on : 09-01-2023

Registered on : 09-01-2023

Decided on : 09-03-2026

Duration : Yrs. Ms. Ds.
03 02 00

IN THE COURT OF DISTRICT JUDGE-1, AKOT
TAL. AKOT, DIST. AKOLA
(Presided over by B. M. Patil)

Regular Civil Appeal No.2/2023**Exh. No. 25****Kishor Ramkrushna Wankhade (Dead)**
through LR's**...Appellant**

- 1) **Smt. Meena Kishor Wankhade**
Age – 41 years, Occ – Household
- 2) **Abhijit Kishor Wankhade**
Age – 21 years, Occ – Labour
- 3) **Kunal Kishor Wankhade**
Age – 17 years, Occ – Education
Minor through natural guardian
Mother appellant No.1
All R/o – Near Durdarshan Kendra,
Gandhi Maidan, Near Raimalbuwa
Sansthan premises, Akot
Tq. Akot, Dist. Akola

V/s.

- 1) **Shri Raimalbuva Sansthan,**
through Managing Trusty
Shri Ramdas Omkarrao Mehare
Age : 60 years, Occupation : Nil
R/o : Akot, Tq. Akot, Dist. Akola.
- 2) **Sau. Shila Bhimrao Kukade**
Age : 59 years, Occupation : Household
R/o : Farkade colony, Akot,
Tq. Akot, Dist. Akola.

...Respondents

3) Sau. Rajani Balkrushna Ghate

Age : 48 years, Occupation : Household
R/o : Lohara, Tq. Balapur, Dist. Akola.

4) Sau. Seema Dattu Kale

Age : 53 years, Occupation : Household
R/o : Parale Tq. Akot, Dist. Akola.

5) Nilesh Ashok Wankhade

Age : 30 years, Occupation : Labourwork

6) Sachin Ashok Wankhade

Age : 25 years, Occupation : Education

7) Tai Ashok Wankhade

Age – 51 years, Occ – Household
Nos.5 to 7 R/o – Raimalbuva Sanshthan,
Lendipura, Akot, Tq. Akot, Dist. Akola

Appearances:-

Learned Advocate for the Appellant : Shri. S. V. Walsinge

Learned Advocate for Respondents : Shri. K. R. Deshpande

:: J U D G M E N T ::

(Delivered on 09th March, 2026.)

The present appeal though captioned to be of year 2023 as its genesis in Small Cause Civil Suit No.01/2002, which culminated in the decree dated 09.08.2006 which awaits the Execution since last more than 20 years. Considering this lapse of time and age of the litigation, it is taken up for adjudication on priority basis.

2. The present appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the C.P.C.”) is directed against judgment and decree (deemed one) dated 19.12.2022 passed by the Ld. Joint Civil Judge (Jr. Dn.) Akot in

Small Cause Execution Proceeding No.1/2013. The Ld. Executing Court has thereby rejected application under Order XXI, Rule 97 of the C.P.C. The appellant is the applicant/objector under Order XXI, Rule 97 of C.P.C. whereas respondent No.1 is the decree holder. Respondent Nos.2 to 7 are the judgment debtors facing the decree of eviction. They shall hereinafter be referred to as per their nomenclature as in the Executing Court.

3. Property under the dispute happens to be a room admeasuring 15 Ft. x 30 Sq. mtrs. the entire chunk being situated at North-East corner of Plot No.79, Nazul Sheet No.28-B at village Akot, Tq. Akot, Dist. Akola. The same is more particularly describe in objection application paragraph No.4 and the same shall hereinafter be referred to as 'the suit property' for the sake of brevity.

Facts in brief are as follows-

4. One Raimalbuva Sansthan registered Trust through Ramdas Omkar Mehare had instituted a suit for eviction against Sumanbai Ramkrushna Wankhade, Ashok Ramkrushna Wankhade through LR's Taibai, Nilesh and Sachin (being the defendants). The said suit came to be decreed, the execution whereof came to be set into motion vide Execution Proceeding No.01/2013 (Small Causes). The appellant/objector moved an application under Order XXI, Rules 97 and 101 read with Section 151 of C.P.C. He contended that, initially he had moved an application u/s. 47 of C.P.C. The plaintiff/decreed holder had

intentionally refrained from making the objector to be party to Suit No.01/2002. The decree therein came to be passed on 18.08.2015 behind the back of the objector, when persons executing the decree had come to execute it.

5. As such the objector is not party to the suit, the decree therein is not binding upon him. He has been possessing the suit property. The plaintiff/decreed holder has been aware about it. Pre-suit notice dated 16.08.2001 was issued by the plaintiff to the objector. It was replied by him. In the said reply, the objector had denied the title and ownership of the suit property with the plaintiff/decreed holder. The objector has been possessing the suit property and as such he has become owner thereof by virtue of adverse possession. The objector had left the house due to family dispute and had returned after some days. He has been residing in the suit property since 26.01.2002. There is ration card in his name separately since year 2002-2003.

6. The plaintiff has been aware of the possession of the suit property with the objector. He has been paying Municipal Taxes since year 2002. The objector was attempted to be dispossessed from the suit property by the decree executing persons in illegal manner. The decree is not executable against the objector. The objector has independent rights and ownership by adverse possession in respect of the suit property. The application, as such, came to be pressed by the objector recording his objection to the execution of decree.

7. The decree holder/the plaintiff opposed the objection application by filing reply at Exh.29. They contended that, the application is not tenable in as much as the earlier application u/s.47 of C.P.C. has been withdrawn by the objector. The objector was not residing or occupying the suit property. Therefore, there was no need to make the objector to be party to the suit or execution proceeding. The objector is not necessary party to the suit. The judgment debtor or defendant did not raise any objection as to the objector or his rights in the suit and his need to be impleaded in the capacity of necessary party. Though the pre-suit notice was issued to the objector at the time of institution of the suit, he was not residing in the suit property. Therefore, he was not made party to the suit. The contentions about occupation of the suit property by the objector in the month of January 2002 are denied by the decree holder. He has no independent right in respect of the suit property. The objection as such is blamed to be an attempt to delay and protract the litigation at the behest of objector and judgment debtors and is prayed to be rejected.

8. To substantiate the objection contention, objector Kishor entered into witness box at Exh.51. He relied on one map/hand sketch at Exh.59, Election Card Exh.60, Adhar Card Exh.61, receipts issued by Municipal Council Exhs.62 to 65, tax receipts Exhs.66 and 67. On the contrary, decree holder Ramdas Onkarrao Mehre entered into witness box on behalf of decree holder at Exh.76.

9. Having regard to the available material and rival contentions, Ld. Executing Court rejected the objection contentions vide order dated 19.12.2022. The said adjudication under Rule 103 having an attribute of decree, is assailed in the appeal under Section 96 of C.P.C.

10. According to the appellant/objector, the impugned order is not proper and correct. The Ld. Executing Court did not consider that, there was specific evidence in respect of adverse possession of the objector since year 2002. The Ld. Executing Court did not consider the peculiar property and description thereof. The Ld. Executing Court should have considered that, possession of the objector since 26.01.2002 was adverse to the original owner. The Ld. Executing Court also did not consider the fact of pre-suit notice being given by the decree holder to the objector. In this backdrop, the impugned judgment, order and the deemed decree is blamed to be devoid of merits and is prayed to be set aside. In the result, the objection is prayed to be accorded the legal sanctity and the execution is prayed to be rejected.

11. Heard Ld. Advocate Shri. S. V. Walsinge for the appellant/objector and Ld. Advocate Shri K. R. Deshpande for the respondent/decreed holder. Ld. Advocate Shri Walsinge reiterated the above contentions in the course of his arguments whereas Ld. Advocate Shri Deshpande supported the impugned judgment and decree.

12. Points for determination and findings thereon are as follows.

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the objector established his independent right in respect of the suit property?	No
2.	Whether the impugned judgment and decree needs an interference in the appeal?	No
3.	What order ?	As per final order below.

REASONS

AS TO POINT NOS.1 TO 3:

13. While appreciating merits of the appeal contentions, it needs to be noted at the outset that, the claim and objection of the appellant herein is based upon provision engraved under Order XXI, Rule 97 of C.P.C. Admittedly, the objector has not been the party to Civil Suit bearing No.01/2002 nor even to Small Cause E.P. No.01/2013. Accordingly, the grievance of the objector contending his independent right qua the suit property is very much susceptible to adjudication under Rule 97 of C.P.C. It may be noted that, the objector in such premise must establish his independent right in respect of the suit property.

14. It may be noted at the outset that, the independent

right claimed and projected by the objector is that, he became owner in respect of the suit property by virtue of his adverse possession. For that matter, it is necessary to see whether the objector did actually become such owner by the adverse possession. It may be noted that, application Exh.27 – the application which set out the objection herein – in paragraph No.4 specifically plead that, there was family crisis in the family of the objector and as such, he left the house i.e. the suit premises. After some days, he returned to the suit property and started residing thereat since 26.01.2002. The plaintiff was aware of it. This possession is claimed to be open, peaceful and to the hostility of the original owner. It may be noted that, there is no overt pleading about the specific ingredient of the adverse possession in application Exh.27 and even in the oral evidence in that premise.

15. So far as documents placed on record are concerned, the electricity bills are of September-2012, June-2016 and October-2015. Those do not specifically co-relate to the alleged span of adverse possession. In the cross-examination of the objector at Exh.51, he specifically admitted that, as he had gone to pay tax of the suit property, it was accepted. Pertinently he does not answer that, he paid tax in respect of the suit property as hostile owner. He has also admitted that, he alone went to reside in the suit property. These aspects do no where point to the ingredients of the adverse possession, particularly in respect of hostile animus to

possess the suit property, openly, peacefully and to the knowledge of real owner (Trust). There is no documentary evidence showing that, the suit property was held by the Objector as and towards the hostile possession. Thus, the independent right as to the suit property in respect of alleged adverse possession, is not established or proved. It is also the contention of the objector that, the pre-suit notice was given to him prior to Civil Suit No.01/2002. Thereafter, he left the suit property and returned somewhere in the month of January 2002. This shows that, there was no continuous possession of the objector to get it ripen into adverse possession.

16. For the above reasons, there is no overt material on record which would show that, the objector established his independent right in respect of the suit property to sustain the objection under Order XXI, Rule 97 of C.P.C. The Ld. Executing Court has rightly rejected the obstruction/the objection under Rule 97/99 of Order XXI of C.P.C.. The impugned order in that premise, does not warrant any interference in appeal. The appeal in the result, needs to be dismissed with costs. Hence, the order -

ORDER

1.	The appeal is dismissed.
2.	The costs shall be borne by the appellant.
3.	Decree be drawn up accordingly.

4.	Copy of this order be sent to the Ld. Trial Court for information.
----	--

Akot

Date : 09.03.2026.

[B. M. Patil]
District Judge-1,
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 : Miss P. K. Gawande, Steno, Grade-III.

Court Name : District Judge-1, Akot.

Date of Order/Judg. : 09.03.2026.

Signed by PO on : 13.03.2026.

Uploaded on : 13.03.2026.

...