

ORDER BELOW APPLICATION EXH.34 IN R.D.NO.2/2015

CNR No.MHGO06-000278-2015

Judgment debtor No.1 is filed present application as objection to the execution proceeding. He contended that, after the death of original decree holder present execution petition is filed by legal representative. He further contended that, Hakrushi is signed by only D.H. No. 1 Ajay Manoharlal Pashine. He further contended that, after the death of original decree holder by following procedure legal representative is not taken on the record. He further contended that, decree holder failed to take other parties i.e. adjacent tenant on record as party to the execution petition.

2. On the other hand decree holder contended that, the present application is not tenable as time barred. J.D. failed to file appeal against the Judgment passed Dt. 09/04/2009. Already possession warrant is issued by the court. In para 5 Of the present application applicant put forth new theory without any evidence. hence, prayed to reject the application.

3. Read the application and say filed by decree holder. I have considered the rival submissions carefully. I have gone through the documents available on record. Decree for possession is passed in R.C.S. No.82/2007 Dt.09/04/2009. This execution petition for executing of above decree is pending since 2009. Present objector has objected the execution of the decree. The objector has also specifically mentioned it in earlier application to stay the execution petition till she obtain necessary order from appellate court. J.D. is not preferred appeal till date or not brought on record any stay to this execution from any appellate court. The J.D. is having knowledge of the present

execution proceeding. The present R.D. is pending since 2009, but till filing this application J.D. has not taken any steps. It is well settled principle that the court cannot go beyond the decree. The objections raised by J.D. is not maintainable. The J.D. failed to bring on record about the fact that adjacent tenant have any interest in the present matter.

4. According to the J.D. the R.D. is signed by only D.H. No. 1 Ajay Manoharlal Pashine. He pointed out Order 21 Rule 11(2). In my opinion, in order to appreciate the arguments advanced by both the Counsel and to have a close scrutiny of Order 21 Rule 26 of Code of Civil Procedure, it is necessary to reproduce Order 21 Rule 26 for ready reference. That rule is as under.

11. Oral application.

(2) Written application.- Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely :-

- (a) The number of the suit;
- (b) The names of the parties;
- (c) The date of the decree;
- (d) Whether any appeal has been preferred from the decree;
- (e) Whether any, and (if any) What, payment of other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

- (f) Whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;
- (g) The amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;
- (h) The amount of the costs (if any) awarded;
- (i) The name of the person against whom execution of the decree is sought; and
- (j) The mode in which the assistance of the Court is required, whether- (i) by the delivery of any property specifically decreed; [(ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;] (iii) by the arrest and detention in prison of any person; (iv) by the appointment of a receiver; (v) otherwise, as the nature of the relief granted may require.

Bare reading of the order 21 rule 11(2) it transpires that application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. perused record of case.

5. The present decree is sent by Sakoli court for execution of decree as property is situated in the jurisdiction of court of Arjuni /Morgaon Dt. 08/04/2015. The original R.D. No 03/2010 is filed before Hon'ble Sakoli Court was signed by all the decree holders. However, the present R.D. No 02/2015 is signed by D.H. No.01. There

is no doubt that all the D.H. and J.D. are having knowledge of the present execution proceeding. More than 10 years is lapsed. but J.D. has not taken any steps till date. Suddenly, She has pointed out present fact. Therefore, this objection is not maintainable. Every decree holder is entitled to taste the fruit of the decree. Thus, following order is passed.

ORDER

Application is hereby rejected.

Dt.02/12/2019

**(P.S.Sonkamble)
Civil Judge (J.D.) Arjuni/Morgaon.**

CERTIFICATE

This is to certify that, the contents of this uploaded judgment/order are same and correct as per the original judgment/ order, signed by the Presiding Officer.

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