

**ORDER BELOW EXH.53**

(Passed on 19<sup>th</sup> August, 2019)

1. The present application is filed by the applicant/objector Hemant Kisan Madavi for resistance or obstruction to his possession of immovable property i.e. suit property.

2. The applicant/objector submits that the suit property is originally belongs to deceased Doma Raghu Kunjam and JD's are legal representatives of deceased Doma. Land survey no.334 (old survey no. 79) of Deori, Tq. Deori Dist. Gondia area 0.99 HR was the subject matter of the suit. Plot no.63 area 1644 Sq. Mtr. is a part of old survey no.79 and it is a tribal land. Old survey no.79 was purchased by DH and same is returned to original owner i.e. deceased Doma, therefore, there is no question remain that any part of survey no.79 was remain in possession of DH. After restoration of possession of old survey no.79 to deceased Doma, deceased Doma was not transfer said land to DH, moreover, DH was never the owner of either plot no.63 or any other part of survey no.334. DH in collusion with land record department prepared false property card of plot no.63 without any order of the Government or any appropriate authority. To declare Abadi (Gavthan) land it is necessary the land must be of Government. In present case to declare Gavthan of old survey no.79 area 1644 Sq.Mtr. the Government has not acquired said land from original owner i.e. deceased Doma. If said land is not acquired by the Government by due process of law then how it was declared as Gavthan and how survey no.69 was separated from old survey no.79.

3. The applicant/objector further submits that DH suppressed the fact that declaration of Gavthan of survey no.79 for plot no.63. After restoration of said land to the deceased Doma it has

a new survey no.334 area 0.99 HR on the name of the deceased Doma. After death of the Doma names of his successors was mutated over the revenue record of old survey no.79, new survey no.334. In the year of 2006 JD's obtained permission from the office of Sub-Divisional Officer, Deori on 10-04-2016 vide its case no.3/LND/31/2005-2006 in the name of the applicant/objector. Moreover, as per said order JD's executed sale deed dated 17-08-2007 in favour of the applicant/objector. After purchasing of said land, the applicant/objector sold said land to several persons and also possession was given. There is no land exist as a survey no.63, the land of survey no.63 survives only on land record as said record was prepared by DH with collusion with land record department. The DH is trying to grab the valuable property of the applicant/objector without having any legal right over the land of survey no.334. Therefore, the applicant/objector filed the present application under Order 21 Rule 97 of the Code of Civil Procedure to restrained and obstruct possession of the immovable property of the applicant/objector in the present execution proceeding. The applicant/objector also prayed to consider his objection. The applicant/objector also prayed that direction be given to the DH not to disturb his possession over the said land.

4. The DH had filed a reply to the present application at Exh.56 dated 11-10-2018. The DH had specifically denied all averments made in the present application except plot no.63 area 1644 Sq. Mt. is a part of old survey no.79 and the land old survey no.79 was purchased by the DH. The DH further submits that the land of gut no.79 was owned by Sukhram Raghu Kunjam and not by Doma Kunjam as alleged by the applicant/objector. As per the order of the Tahsildar Deori, an order passed to restore land of an area 2.00 HR to

Sukhram Kunjam of gut no.79 but he refused to take possession of it, as he was stood for the execution sale deed executed in favour of the DH. Remaining land of an area 0.81 HR of gut no.79 was given to DH by the Tahsildar Deori, later on said land diverted into Nagar Bhumapan No.63. There is an entry in revenue record which shows that the part of gut no.79 was diverted into Nagar Bhumapan no.63 and which was owned by the DH, accordingly, DH was in the possession of said land till her dispossession. The DH further submitted that the applicant/objector is allegedly trying to raise same issues which had been time to time either raised by the original judgment debtors or his legal heirs. All the issues which had been raised, had been decided by the court of competent jurisdiction. Alleged objections raised by the applicant/objector is hit by the principle of Res Judicata. All the findings achieve its finality.

5. The DH further submits that father of the applicant/objector was the then Sub-Registrar of Deori and during his tenure at the same post by misutilizing his powers the alleged sale deed was came to be executed by JD's in favour of the applicant/objector. Said sale deed of gut no.334 came to be executed after passing of the judgment and decree in Regular Civil Suit No.48/2000. Therefore, the said alleged sale deed is not having binding force on the DH. The applicant/objector has suppressed material facts from the court and also not came with the clean hands. The DH further submits that there appears to be misconception of law and fact which resulted into filing this present objection application. The present objection application is not tenable in the eye of law, therefore, DH prayed to dismissed with compensatory costs of rupees 50000/- (Fifty Thousand Only).

6. Heard learned advocate B.T. Maskare for the applicant/objector and learned advocate P.Z. Shaikh for the DH.

7. Perused the record. After perusal of record it appears that DH had filed the Regular Civil Suit No.48/2000 against JD's for perpetual injunction. In said suit JD's filed a counter claim. Accordingly, on 30-01-2008 Regular Civil Suit No.48/2000 was decreed and counter claim was dismissed. After that the DH filed present execution proceeding on the basis of judgment and decree passed in Regular Civil Suit No.48/2000. Now, coming towards the present application, the applicant/objector filed the present application for resistance or obstruction to his possession of immovable property i.e. suit property. Perused the judgment and decree passed in Regular Civil Suit No.48/2000. After perusal of said judgment it clearly appears that issues in respect of ownership of suit property, possession of the suit property, transfer of tribal land and obstruction by the original defendant (JD's) are already decided by the court in said suit. The applicant/objector by filing the present objection application again raising same issues which have been already decided by the court in Regular Civil Suit No.48/2000.

8. It is the contention of the applicant/objector that in the year of 2006 JD's obtained permission from the office of Sub-Divisional Officer, Deori on 10-04-2016 vide its case no.3/LND/31/2005-2006 in the name of the applicant/objector and as per said order JD's executed sale deed dated 17-08-2007 in favour of the applicant/objector. Perused xerox copy of the sale deed dated 17-08-2007 on record. After perusal of said sale deed it appears that JD's executed said sale deed in favour of the applicant/objector during pendency of the Regular Civil Suit No.48/2000, therefore,

judgment and decree passed in said suit is binding on the applicant/objector. Moreover, till today judgment and decree passed in Regular Civil Suit No.48/2000 is never challenged before the appropriate court. The applicant/objector raising same issues which have been already decided by the court in Regular Civil Suit No.48/2000. After perusal of present objection application it clearly found that the nature of objection raised by the applicant/objector is nothing but a challenge to findings recorded on merits by the trial court while passing the judgment and decree in Regular Civil Suit No.48/2000. The trial court held in Regular Civil Suit No.48/2000 that the DH is in possession of the suit property. Therefore, the applicant/objector not entitled for direction as prayed by him against DH that the DH not to disturb his possession over the said land. Therefore, in such facts, circumstance and legal position there is no need to consider objection of the applicant/objector. So, in the interest of justice, I proceed to pass the following order.

### **ORDER**

The present application is hereby rejected.

Date:- 19-08-2019

Sd/-

Mohmad Wasim Akram  
S/o Mohmad Jalal Sheikh  
Civil Judge Junior Division  
Deori.