



**Vishnu @ Sunil Gangaram Patil... DH
Vs.
Gangaram Baburao Patil & Ors... JD's**

1. The JD-2 Raghunath Gangaram Patil has filed this application under Section 47 of the Code of Civil Procedure challenging maintainability of this execution proceeding and also requested to allow him to lead evidence to prove his case.
2. The facts in dispute can be summarized as under :-

This execution petition is filed by DH i.e. one of the parties to the compromise decree (Orig. Def. 3). It is contention of the DH that JD-2 obtained possession of his portion of the suit property as per compromise deed and mutate his name over it and the refused to hand over the vacant and peaceful possession of the portion of the suit property to the DH i.e. first floor of Durgadi Bungalow (Gram panchayat House Property No. 54 and 55) situated at village Surute, Taluka :- Chandgad, District :- Kolhapur. However, JD-2 denied this contention and submitted that when the compromise deed was executed by the parties in Spl. Civil Suit 5 of 2018 it was decided mutually that DH has to pay Rs. 15,00,000/- to the JD-2. To that effect a mutual rough draft of consent term was prepared by his Ld. Advocate Mr. Ajarekar. Nevertheless, without incorporating this fact in the compromise deed filed before the Court, obtained an incorrect compromise decree. According to JD-2, that compromise deed is not as per settled terms and conditions of all parties. Therefore, Jd-2 it is not acceptable to JD-2.

3. The JD-2 alleges that, DH and other J.D. misrepresented and played fraud on JD-2 and obtained a collusive compromise deed from the Court. In such circumstances, DH does not have any right to ask for execution of such defective compromise decree. The JD-2 is ready to prove his contention by adducing oral evidence. He has filed documentary evidence on record. Therefore, JD-2 requested to stop execution of the compromise decree and further requested to stay the possession warrant.

4. On the other hand, the DH filed a detail Reply below Exh. 23 and submitted that the JD-2 is misleading the court by concealing the fact from the Court with intention to delay the execution proceeding. DH pointed out that he already filed an application (Exh. 19) with a request to issue a possession warrant as provided under Order 21 Rule 35 of the Code of Civil Procedure. In that application as well DH mentioned that JD-2 obtained possession of his respective share and mutated his name over it in revenue. To support his contention the DH filed on record all documents and revenue records in respect of the properties received by the JD-2 as per compromise deed.

5. When JD-2 act upon as per compromise deed to get his share then why he is challenging correctness of another portion of same compromise deed and refusing to handover vacant and peaceful possession of the first floor of Durgadi Bungalow (Gram panchayat House Property No. 54 and 55) situated at village Surute, Taluka :- Chandgad, District :- Kolhapur. According to the DH he is losing Rs. 5000/- rent per month from the date of decree i.e. 25.05.2018, on failure of JD-2 to vacate that premises on time. This conduct of JD-2 is not justifiable therefore, DH requested to issue possession warrant by allowing application Exh. 19 and by rejecting application (Exh.27) filed by the JD-2.

6. The JD-2 is relying on a rough draft of compromise pursis which was never filed in the court at the time of compromise taking place in the Spl. Civil Suit 5 of 2018. Therefore, that pursis does not have any evidentiary value. He also filed on record a handwritten agreement scribe on Rs.100 stamp paper and office copy of one legal notice dated 09-01-2020 issued to the DH. On perusal of that legal notice and stamp paper *prima facie* it appears that the contents of it are contrary to each other. Also, these documents are rough documents and not registered or filed in any court. It was lying with the Ld. advocate of the JD-2.

7. Moreover, the JD-2 did not initiate any proceeding after service of legal notice to DH nor challenged compromise decree as per law. The JD-2 is signatory to the compromise deed executed in the Spl. Civil Suit 5 of 2018 and he acted as per terms and conditions to get benefit for himself. He is not stating that he is ready to surrender properties availed by him as a result of compromise decree. Only refusing to perform his part as per that compromise deed. Intention is clear that he wants to deprive the DH from enjoying the fruits of the compromise decree, therefore, he is refusing to vacate the Durgadi Bungalow.

8. Ld. Advocate for the DH during arguments relied upon following judgments of Hon'ble Apex Court and various Hon'ble High Courts as listed below :-

- 1 Basavraj Vs. Indira & Ors.; 2024 ALL SCR 749.
- 2 Harnam Singh & Ors. Vs. Arbindu Nath & Ors.; AIR 2004 Punjab & Haryana 210.
- 3 Shivaji Laxman Bhujbal Vs. Shrikant Mahadeo Kaduskar and Ors; AIR Online 2021 Bom 734.
- 4 John Fransisco D'Cunha and another Vs. Shantabai Parshekar and Another, AIR 1976 Goa, Daman AND Diu 78.

5 Sobha Singh and Sons Pvt. Ltd. Vs. Shashi Mohan Kapur (Deceased) thr. L.R., AIR Online 2019 SC 510.

9. The ratio laid down in above cited judgments is that, the consent decree operates as an estoppel to the parties unless it is set aside by the court by an order on an application filed under Order 23, Rule 3 of the Code of Civil Procedure. No appeal is maintainable against the consent decree and if it has to be challenged, then the party must approach the Court which passes such decree. Any previous claim or transaction must be pleaded in suit itself and objection in that respect cannot be raised in the execution petition. If legal representatives and decree holders acted on consent terms and obtained possession of their respective sharers, then unless it is proved that compromise decree is void or it is not executed yet, then one of the parties to that execution can not filed on application u/s 47 of the Code with request to dismiss the execution petition. Even if formal decree is not passed and parties acted upon the compromise deed arrived at between the parties, then such compromise has to be treated as decree during the interregnum period by virtue of Order 20, Rule 6A(2) of the Code of Civil Procedure.

10. The ratio laid down in the above cited judgments is squarely applicable to the facts of the present execution proceeding. The JD-2 have deprived the DH from his legal entitlement to have possession of the first floor of Durgadi Bungalow as per valid compromise decree obtained in Spl. Civil Suit 5 of 2018. The JD-2 is enjoying his portion as per said compromise decree, but refusing to vacate the first floor of Durgadi bungalow. Thus, he is occupying it illegally and causing financial loss to the DH. Such conduct is not justifiable and needs to be corrected by passing appropriate order of issue of possession warrant.

11. Therefore, I do not find justifiable reason to allow an application filed by the JD-2 raising objection to this execution proceeding and his request of adducing evidence. On the other hand, DH establishes his strong case by relying on certified copy of Exh. 1, order passed on it and compromise deed (Exh. 17) obtained from Spl. Civil Suit 5 of 2018. Therefore, I passed the following order.

-: ORDER :-

- 1) The application (Exh. 27) filed by the JD-2 u/s 47 of the Code of Civil Procedure, is rejected.
- 2) The application (Exh. 19) filed by the DH to issue a possession warrant as provided in Order 21 Rule 35 of the Code of Civil Procedure, is allowed.
- 3) The JD-2 shall pay a cost of Rs. 3000/- to the DH.
- 4) Issue the possession-warrant against the JD-2 as provided in Order 21 Rule 35 of the Code of Civil Procedure to handover actual vacant and peaceful physical possession of the first floor of Durgadi Bungalow (Gram panchayat House Property No. 54&55) situated at village Surute, Taluka :- Chandgad, District :- Kolhapur, by removing JD-2 or his agent, if necessary.

Place:- Gadhinglaj
Date:- 10-03-2026

(S. C. Havelikar)
Jt. CJSD, Gadhinglaj
District :- Kolhapur.