

**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION,**  
**KAMPTEE**  
**Reg. Dkst.NO. 7/2019**

**Deorao Santoshrao Radke.Vs. Ramashankar Jiralal Prasad.**

**ORDER BELOW EXH.32.**  
(Passed on 17/02/2020)

This is an objection made by Swati Aruj Jaiswal (Objector) under Order-21, Rule-58 of the Code of Civil Procedure, 1908 for attachment of the house property.

2] The objector submits that she is a daughter and one of the legal heirs deceased Sheeladevi Ramshankar Prasad. She would submit that house No.654 and 655 situated ward No.2 was owned by Sheeladevi, who died on 16.1.2014. She further submits that after demise of Sheeladevi, she becomes the owner of property alongwith other legal heirs.

3] The objector submits that it is learnt to her that the Hon'ble Bombay High Court, vide Writ Petition No.8286/19 was pleased to pass an order on 15.1.2020 and directed to attach above mentioned house property, which is standing in the name of her mother, for satisfaction of the decretal amount. However, the decree holder, misleading the court, filed the application for auction and sell the house property as per order passed by the Hon'ble High Court. He would submit that the said application, on the face of it, is untenable, in as much as, the Hon'ble Bombay High Court has not given any direction to that effect.

4] The objector further submits that though she was one of the legal heirs, the decree holder deliberately did not make her party to the suit, and suppressed this material fact from court with a sinister motive only to grab decretal amount. She would submit that she has 1/4th share in the above stated house, and if the house property is attached, she will be deprived of her valuable right in the house and will cause great hardship to her. She urged that as she has good case on merit, her objection be decided first, before passing any order related to the house property. Banking upon the above submissions, she prays for above stated relief.

5] Per contra, the decree holder filed reply (Exh.33) and strongly opposed the objection taken by the objector. He would submit that the original decree came to be passed against late Sou Sheela Ramshankar Prasad. Judgment debtor No.1 and 2 are the husband and son of Sheela Prasad respectively. He would submit that the Hon'ble Bombay High Court in Writ Petition No. 826/19 vide order dated 15.1.2020 who pleased to direct the above stated house property standing in the Sheela Ramshankar Prasad be attached immediately. If respondent/tenants deposit the entire decretal amount along with interest, the attachment can be released. He would contend that it is axiomatic that undivided share of judgment debtors can be attached in the execution of money decree, and there is no necessity for decree holder to implead other legal heirs of the deceased tenant. On this premise, it is submitted

that as the money decree is binding on all the legal heirs of late Sheela Ramshankar Prasad, the objector has no right to obstruct the execution of decree. He would submit that the judgment debtors have not deposited the decretal amount towards satisfaction of money decree. He would submit that the objection being untenable, it be rejected with costs.

To bolster his submissions, the decree holder has placed reliance upon the following judicial pronouncements.

1]	<p><b><u>Ila Rohit Sanghvi and other Vs. Dr. Pankaj Champaklal Gandhi and another and Jyoti Pankaj Gandhi reported in 2016(5) Mh.L.J.</u></b>  <b><u>Held :-</u></b>“Execution of money decree- attachment of undivided share in HUF property- Undivided share of defendant/judgment debtor can be attached in execution of decree”.</p>
2]	<p><b><u>Anil Shivdas Gupta and others Vs. Thamman Singh and another reported in AIR 2017 Chhattisgarh 1</u></b>  <b><u>Held :-</u></b> “In event of death of original tenant, tenancy rights devolve on heirs of deceased tenant. It is single tenancy which devolves on heirs. There is no division of premises or or rent payable therefor. Thus heirs succeed to tenancy as joint tenants and not as tenants in common. Therefore, even when only one of the legal heirs of the deceased tenant, who is in possession of the property, is impleaded in execution proceedings, the Executing Court should proceed with the execution instead of directing the decree holder to implead other legal heirs of the tenant”.</p>

6] Heard Mr. Sandesh Indorkar learned advocate for the objector and Mr. Pudke, learned advocate for the decree holder.

7] I have gone through the record of the case and given thoughtful consideration to the submissions made by both the

learned advocates for their respective parties. Before advertizing to appreciate their rival submissions, it is inevitable to note here that the Hon'ble Bombay High Court vide writ petition 8286/19, was pleased to order that the above stated house property be attached immediately. The para no.4 and 5 of the said order is culled out and reproduced herein below for ready reference.

**Para No.4**

*“Our attention is invited to the Municipal Receipt of the property standing in the name of Sau.Sheela Ramashankar Prasad, who has already expired and the respondent No.1 and 2 are her legal heirs. The original suit was against sau. Sheela Ramashankar Prasad”.*

**Para No.5.**

*“We therefore, direct that the house property No.654 and 655 in Ward No.2 at Kanhan in the name of Sau. Sheela Ramashankar Prasad be attached immediately. The executing Court to take steps to implement this order. If the respondent-tenants deposit the entire decretal amount along with the interest, the attachment can be released”.*

8] From the above highlighted order passed by the Hon'ble High Court it is obvious that the Hon'ble Bombay High Court was pleased to observe that the house property No. 654 and 655 in ward No.2 at Kanhan standing in the name of Sou Sheela Ramshankar Prasad, and consequently, directed it be

attached immediately. Now, in view of the ration laid down in Ela Rohit Sanghvi's case (supra) and Anil Gupta's case (supra), there remains no scintilla of doubt that in money decree, it is not sine qua non to implead legal heirs, and undivided share of judgment debtor can be attached in execution of decree. In the light of the order passed by the Hon'ble Bombay High Court in above mentioned writ petition and ration laid down in above stated judicial pronouncements, I am persuaded to hold that the objection being devoid of any merit, it will have to be thrown overboard. In the sequel, I pass the following order ;

**:ORDER:**

The objection (Exh.32) stands rejected.

Dated : 17/02/2020

**(D.R. Bhola)**

Civil Judge Junior Division Kamptee.  
Kamptee.



