

**ORDER BELOW EXHIBIT-40**

The present application is moved by Judgment Debtor for rejection of the execution petition. He submitted that the decree on which present execution petition is filed is nullity. When decree is nullity, execution petition is not tenable. Hence, prayed accordingly. The Decree Holder strongly opposed the application. She submitted that she is 92 years old lady. She is fighting for justice for more than 40 years, despite this she is not getting fruits of decree. The present application is filed only to oust the Decree Holder from testing the fruits of decree. Hence, prayed for rejection of application.

02. Heard both parties at length. The Judgment Debtor relied upon the *ratio* laid down in ***Kiran Singh Vs. Chaman Paswan, AIR 1954 SC 340, Dadu Raghu Patil Vs. Tukaram Ranaba Dhere, AIR 1959 Bom 221, Chhabubai Balwantrao Shinde Vs. Gulabrao Balwantrao Shinde, AIR 2001 Bom 486 and Gulabrao Balwantrao Shinde Vs. Chhabubai Balwantrao Shinde, AIR 2003 SC 160.***

03. It is the contention of the Judgment Debtor that when original suit was filed, the Decree Holder had claimed $\frac{1}{2}$ share in agricultural land bearing block No.593. However, the

Hon'ble Appellate Court granted full share in block No.593 and accordingly present execution is filed by Decree Holder claiming full share in block No.593. In fact, when Decree Holder claimed only $\frac{1}{2}$ share in block No.593 and the Hon'ble Appellate Court granted full share in block No.593 then obviously that decree is nullity and when decree is nullity, it is *ab-initio* void and parties cannot get any right to execute the decree. The Judgment Debtor has right to challenge the said decree in the present execution when decree is itself nullity.

04. On the other hand, the learned counsel for Decree Holder argued that originally she claimed full share in block No.593. Accordingly the Hon'ble Appellate Court granted decree of full share in block No.593. Now Judgment Debtor has moved this application only to prolong for testing the decree.

05. I have considered the submissions advanced by both parties. It appears from the record that previously this Decree Holder had filed execution petition bearing R.D. No.94/1999. In the said execution, this Judgment Debtor had taken the same objection and the executing Court of above said execution petition allowed the objection Exh.65 and thereby passed the order below Exh.1 and disposed of the execution petition being not maintainable.

06. Later on, Decree Holder moved before Hon'ble District Judge-1, Barshi for correction of decree vide Civil M.A. No.90/2015. The Hon'ble District Judge-1 by its order

dated 26/10/2018 corrected the decree and granted ½ share out of block No.535 ad-measuring 2 H 82 R land and intact the share in block No.593. Thereafter, the Decree Holder filed present execution petition.

07. I have perused the copy of Exh.1 in which it appears that the Decree Holder has filed the execution petition for getting the possession of block No.593 ad-measuring 1 H 05 R land. Now question before me is that whether present decree is void *ab-initio* or nullity.

08. The Judgment Debtor has filed the xerox copy of certified copy of plaint of R.C.S. No.620/1980 vide Exh.45. The Decree Holder also filed the same copy with list Exh.47. I have also called the record of R.D. No.94/1999. In the said execution petition, there is certified copy of plaint of R.C.S. No.620/1980. The said document is filed with list Exh.39 in R.D. No.94/1999. All these documents are the same.

09. I have perused all these documents. It is good to reproduce the contents of plaint para No.1A in vernacular for getting the intention of the plaintiff for filing the suit for possession of alleged property;

“अ) गट नं.	हे.आर.	आकार.	पु.	द.	प.	उ.
५९३	१-०५	१-५६	५९१	शिव कारी	५९४	६००
५३५	२-८२	६-५६	५३२	५४०	५३०	५३९
			५३३	५३१		
				५३७		

या पैकी १/२ हिस्स्याची जमीन.”

10. Can "या पैकी १/२ हिस्स्याची जमीन" these wordings be read with block No.593 or with block No.535 or with both blocks ?

11. It appears to me that the Decree Holder has not mentioned that she having $\frac{1}{2}$ share in both agricultural lands but she only mentioned that she has $\frac{1}{2}$ share only in block No.535. She could have been $\frac{1}{2}$ share in block No.593 then she would have been mentioned that she having $\frac{1}{2}$ share in block No.593. But she has mentioned $\frac{1}{2}$ share below block No.535 and not below block No. 593.

12. The Judgment Debtor taking the benefit of above said wordings which mention that या पैकी १/२ हिस्स्याची जमीन. The interpretation or the real intention of these wordings is that the Decree Holder only claimed $\frac{1}{2}$ share in block No.535 and claimed full share in block No.593.

13. Supposed as per Judgment Debtor, the Decree Holder has only $\frac{1}{2}$ share in block No. 593 then when the Decree Holder moved an application for correction of decree then why the Judgment Debtor has not chosen to raise such objection before the Hon'ble Appellate Court. Even now the decree passed in R.C.A. No.204/1986 became final. Because the second appeal filed by Judgment Debtor bearing Second Appeal No.618/1990 is also dismissed by Hon'ble Bombay High Court on 07/02/1991. The Judgment Debtor has not raised such objection either in first appeal or second appeal. Now he raised such objection when above said decree became final.

14. No doubt, when the decree itself nullity then the aggrieved person can show that how the decree is nullity. But in this case, I have already mentioned that the very intention of the plaintiff in filing R.C.S. No.620/1980 was claiming full share in block No.593 and not claiming $\frac{1}{2}$ share in block No.593.

15. The Judgment Debtor has relied upon citations which are with list Exh.43. Above said citations are not helpful to the Judgment Debtor. I came to conclusion that the alleged decree is not nullity. The very intention of plaintiff i.e. Decree Holder had to claim full share in block No.593. Thus, present objection has no substance. The present objection deserves to be rejected. Hence, application Exh.40 is rejected.

Barshi.
Date : 20/04/2024.

(S.B. Vijaykar)
Jt. Civil Judge (J.D.),Barshi.

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order

(a)	Name of the Stenographer	:	Shri.S.R. Barangule
(b)	Court	:	Shri.S.B. Vijaykar, Jt.C.J.J.D.&J.M.F.C. Barshi.
(c)	Judgment /Order declared on	:	20/04/2024
(d)	Judgment /Order signed by P.O. on	:	20/04/2024
(e)	Judgment /Order uploaded on	:	20/04/2024