

MHSO130002112019



R.D. No.05/2019

Shevantabai Vs. Ramprabhu.

### **ORDER BELOW EXHIBIT-90**

01. The objector has filed this objection under Order 21 Rule 97 and section 47 Civil Procedure Code, 1908.

02. He submitted that he is residing at Jalgaon, Tal.Barshi and having agricultural land adjoining to the land of Decree Holder and Judgment Debtor. The suit property is in possession of the deceased father of objector namely Maruti Chavan since 1972 and after demise of his father, he is in possession of suit property as per the tenancy. The Judgment Debtor is not in possession since year 1972. The suit property was allotted to the father of the Judgment Debtor in partition and after his demise, the property was allotted to mother of the Judgment Debtor Subhadrabai. At that time, Judgment Debtor was minor, in spite of that, his name was mutated to old Survey No.101/5 having Gat No.593 as owner. The family of Decree Holder and Judgment Debtor is very known to the father of the objector. The Judgment Debtor was minor, therefore, the responsibility came to her mother and she is handicapped therefore she has given the suit property for cultivation to the objector as a tenancy as per annual payment of Rs.750/-

and in view of the agreement, she has taken three years tenancy amount of Rs.2,250/- in advance. Hence, the mother of the Judgment Debtor has given the suit property to the father of the objector as per the tenancy on 01/01/1972 for amount of Rs.750/- per *annum* of rent and she has handed over the possession of the suit property to his father. The father of the objector has also filed application at Talathi for mutation of his name as per the tenancy. Then after, the relation between the objector and the Judgment Debtor converted into the close relatives, therefore, they have not recorded his name in revenue record.

03. In the year 2009, the father of the objector was died and then after the objector is in possession of the suit property and used to pay the tenancy amount to the mother of Judgment Debtor. Meanwhile, in the year 1980, marriage has been taken place between the daughter of the Maruti Chavan and Judgment Debtor. Therefore, considering the close relation, he has not mutated his name in revenue record as per the tenancy. The suit property has been irrigated and the pipe line has been made by the Maruti Chavan, however the name of the Judgment Debtor has been mutated in the revenue record, therefore, the loan transaction and other documents has been proceeded in the name of the Judgment Debtor.

04. Before some days, the court bailiff has come for recovery of possession of the suit property and after inquiry, he came to know that the matter has been pending in between Decree Holder and Judgment Debtor regarding the ownership and possession since long. The present matter has been filed by both parties in collusion with hands with each other for denying the right of the objector. The Judgment Debtor is son-in-law of the objector, therefore, he has not proceeded regarding the ownership of the suit property since 1981. The objector came to know that the plaintiff had filed Civil Suit bearing RCS No.620/1980 in the year 1980 regarding the ownership and possession of the suit property and he has not made the father of the present objector Maruti Chavan as a party in that suit deliberately. Therefore, the right of the present objector has not adjudicated before the Court in that matter. As per the revenue record, the Judgment Debtor is the owner of property and the objector is cultivating the suit property as a tenant. The plaintiff has not interfered in the possession right of the present objector. Both parties have not challenged the tenancy right of the objector, therefore, the Judgment is not binding upon the objector and he has filed the application before the Ld. Tahsildar under section 70 of Tenancy Law. The objector has right under section 32(o) of Tenancy Act to purchase the suit property as a tenant. This court had no jurisdiction regarding the tenancy, therefore,

the decree passed in RCS No.620/1980 is passed under lack of jurisdiction. Hence, cannot be executed. Ld. Tahsildar has right to decide the tenancy under section 85B of Tenancy Act. Therefore, the objector prayed to refer the matter before Ld. Tahsildar for adjudication and the judgment and decree passed in RCS No.620/1980 is not binding upon him. Hence, prayed for declaration that the judgment and decree is not binding upon him and restrain the Decree Holder from recovering the possession from him. The objector also prayed for stay of the possession warrant and refer the matter before the Ld. Tahsildar to adjudicate and also prayed for temporary injunction against the Decree Holder and Judgment Debtor.

**05.** The Decree Holder filed her say at Exh.98 and denied all the allegations made by the objector. She contended that the present objector has no locus standi to file the present application as this Court has no jurisdiction to entertain the tenancy matter. The present objector is not party to the main suit or legal representative or purchaser of the suit property. Hence, he has no right to file the present application. The defendant taken up this matter to the Hon'ble Bombay High Court, in spite of that, he has not succeeded. The objector is brother-in-law of the Judgment Debtor and he has filed the present application as per the direction of the Judgment Debtor. The Judgment Debtor

and the objector has filed the present application in collusion with hands. The objector has no right, title and interest regarding the suit property. The Hon'ble Bombay High Court in writ petition No.17076 of 2024 directed the Judgment Debtor to hand over the possession after removing all the impediments and also directed to him to hand over the possession within one month to the Decree Holder. In spite of that, the Judgment Debtor has not handed over the possession to the Decree Holder and filed the present application in collusion with the present objector. Hence, he prayed for rejection of application with costs of Rs.20,000/- and also prayed for handed over the possession to the Decree Holder of the suit property.

**06.** The Judgment Debtor has filed his say below Exh.106 and contended that the contents of the application are correct to some extent. However, he denied the fact that the objector is tenant to the suit property. The father of the objector Maruti Chavan has cultivated the suit property as per tenancy and after his demise, the objector and the Judgment Debtor are cultivating the suit property collectively and as per the consent of the objector, the Judgment Debtor alone is cultivating the suit property since last some years. The objector is not the tenant of the suit property and the complaint regarding tenancy is not maintainable in the present court and he have to file the

present proceeding before Ld. Tahsildar Barshi separately.

07. Heard both side. The objection-petitioner also placed his reliance on the citations *Brahmdeo Choudhary Vs. Rishikesh Prasad Jaiswal, AIR 1997 SC 856, Ubaldino Oliveira Vs. Sadanand Ladu Borkar, 1996(5) BOMCR425* and *Arif Abdul Ghani Vs. S. Maheshwar Rao, 1999(4) ALD300*. The objector placed on record the document which is tenancy application filed before Tahsildar, xerox copy of tenancy receipt and xerox copy of map of Gat No.593. On the other hand, the Decree Holder placed reliance on the citation *Brahmdeo Choudhary Vs. Rishikesh Prasad Jaiswal, AIR 1997 SC 856, Sriram Housing Finance and Investment Vs. Omesh Misra Memorial Charitable Trust, Civil Appeal No.4649 of 2022 arising out of SLP (C) No.12833 of 2014 and Brakewel Automotive Components (India) Pvt. Ltd. Vs. P.R. Selvam Alagappan, 2017(6) Mh.L.J.*

08. Perused the record before me and gone thoroughly through the record. It is the contention of the objector that initially his father is in possession of the suit property since 1972 and after his demise, the objector is in possession of the suit property and cultivating the same as per the tenancy. Due to the close relation between the Judgment Debtor and him, he could not proceed for

recording his name in revenue record as per the tenancy. However, since long, he is cultivating the suit property. As per his submission, he has no knowledge of the civil proceeding bearing RCS No.620/19 and when the court bailiff came in suit property for recovery of possession, then he came to know the fact that the dispute regarding the ownership and the possession was pending in between the Decree Holder and Judgment Debtor. In fact, the Decree Holder has not obstructed the present objector regarding the cultivation and possession of the suit property. Hence, he has no reason to know the proceeding pending before the parties. He has a right as per the tenancy law. Hence, his possession could not be obstructed at the hands of the Decree Holder.

09. The Judgment Debtor came with the case that he and objector jointly cultivating the suit property, since last some years, he alone is cultivating the suit property. However, the Judgment Debtor specifically denied the right of the objector as a tenant. Decree Holder contended that the objector has no *locus standi* to file the present application as he was not party to the proceeding of the earlier suit or is not legal representative or purchaser of the suit property. Therefore, he has no right, title or interest regarding the suit property.

10. The objector has filed this objection under Order 21 Rule 97 and section 47 of the Civil Procedure Code, 1908. As narrated the facts herein above, the objector has claimed his independent tenancy rights over the suit property. As per his contention, before passing of the decree, his father was inducted as a tenant, therefore his possession over the suit property needs to be protected as per the tenancy law. In response to the contention, Decree Holder has strongly objected the contention raised by the objector regarding alleged tenancy. According to Decree Holder, this objection is not maintainable and this Court has no jurisdiction to entertain the application. The Judgment Debtor also filed his say on the objection petition and denied the fact that the objector is tenant over the suit property.

11. After gone through the provision more particularly law regarding execution under Order 21 Rule 97 and section 47 of Civil Procedure Code, 1908, the scheme and procedure regarding resistance or obstruction to the execution proceeding and questions to be determined by executing court has been provided under the Civil Procedure Code, 1908. So far as, filing of the petition by the objector is concerned, the law regarding to the present aspect is very clear and settle. The person who is stranger to the decree and claiming his independent right, then

certainly he is entitled to resist to the decree or warrant of possession. However, at the same time, the responsibility casted upon executing court is to avoid delay in execution of the decree. Considering the objections, law further provided that if objection is based upon certain rights which are *prima facie* established with the strong evidence which is documentary in nature, then the court required to adjudicate it after framing of issue and opportunity to lead evidence to the parties concerned. In the present case, the objector has raised their tenancy right on the basis of their oral statements. He has not produced valid, authenticate document so as to establish his tenancy as well as possession over suit property and that to before passing of the decree. In such circumstances, the objection is based upon without valid and authenticate document regarding the tenancy, then it is not required to be adjudicated after leading evidence.

12. Record shows that the objector has relied upon the document which is tenancy receipt (खंडाची पावती). The copy is xerox in nature therefore, could not be reliable at this stage. It appears that the present document is not admissible in the eyes of law. The objection petitioner failed to corroborate their continues possession along with revenue record. In absence of such strong evidence, the issue of tenancy as raised by the objector is not required to

be adjudicated.

13. The record further reveals that already possession warrant has been issued and after long battle the matter is reached to be final adjudication of the decree. The contention of the objection petitioner that he has no knowledge about the civil proceeding pending between the Judgment Debtor and Decree Holder since 1980 and he got knowledge about the proceeding when the bailiff came for execution of the possession warrant, is not admissible and adoptable at this stage. Both parties are fighting the battle since 1980 and now by the present execution petition it reached to its finality. In such circumstances, the objector is unaware of the facts of the proceeding filed between the parties is not acceptable to the prudent man.

14. Considering the facts and nature of the objection, it appears that by filing of the present application in the execution petition, objector has avoided the execution of the decree and thereby he is trying to deprive the Decree Holder from her legitimate rights and to test the fruits of the decree. No prudent man can remain keep quite despite issuing of possession warrant. It appears that after getting unsucccess the present objection came to be filed on the basis frivolous ground. Therefore, I have no hesitation to held that the objection petition is baseless and consumed

the time of the court as well as the Decree Holder and ultimately creating the delay in execution proceeding. Therefore, it is just and necessarily to saddle costs of Rs.2,000/- on the objector.

15. The objector has relied upon the *Brahmdeo Choudhary Vs. Rishikesh Prasad Jaiswal*, AIR 1997 SC 856, *Ubalino Oliveira Vs. Sadanand Ladu Borkar*, 1996(5) BOMCR425 and *Arif Abdul Ghani Vs. S. Maheshwar Rao*, 1999(4) ALD300, in which the Hon'ble Apex Court observed that objection under Order 21 Rule 97 of Civil Procedure Code the executing court has jurisdiction to entertain the objection petition and all questions under Rule 97 and 99 arising between the parties to go through the proceeding or their representatives shall be determined by the court dealing with the application and not to the by separate suit. As discussed herein above, the contention raised by the objector can be considerable, however, the objector failed to establish his right over the suit property.

16. In the case of *Maharashtra Automobiles Vs. Navjivan Co-operative Housing Society Ltd. & anr*, 2011(2) Bom CJ348, the Hon'ble Lordship has observed that;

*“Adjudication mentioned in Order 21 Rule 97(2) need not necessarily involve a detail enquiry or collection of evidence. It has further been held*

*that Court can make the adjudication on admitted facts or even on the averments made by the resister.”*

17. Moreover, the Hon’ble Apex Court ***Periyammal (Dead Thr. Lrs.) vs V. Rajamani And Anr. 2025 INSC 329*** has directed to dispose of the execution petition expediently. Considering the directions of the Hon’ble Apex Court and the facts on the record, the objection petitioner failed to establish his right over the suit property. Thus, the application deserves to be rejected along with costs. Hence, I proceed to pass following order;

### **ORDER**

1. The objection petition (Exh.90) is hereby rejected on the costs of Rs.2,000/- (Rs. Two Thousand only) to be paid by the objector to the Decree Holder.

Barshi.  
Date : 18/11/2025.

Sd/-  
( Smt. P.V. Raut )  
Jt. Civil Judge (J.D.), Barshi.

**CERTIFICATE**

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

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|-----|-----------------------------------|---|----------------------------------------------------|
| (a) | Name of the Stenographer          | : | Shri.S.R. Barangule                                |
| (b) | Court                             | : | Smt. P.V. Raut,<br>Jt.C.J.J.D.&J.M.F.C.<br>Barshi. |
| (c) | Judgment /Order declared on       | : | 18/11/2025                                         |
| (d) | Judgment /Order signed by P.O. on | : | 28/11/2025                                         |
| (e) | Judgment /Order uploaded on       | : | 28/11/2025                                         |