

MHSO130009532010



R.D. No.25/2010

Irappa Patil

Vs.

M/s. Baldava Co. & ors.

ORDER BELOW EXHIBIT-135

The objector moved an objection under Order XXI Rule 97 r/w section 47 and 151 of the Code of Civil Procedure, 1908 (hereinafter referred as 'CPC' for brevity). The objector submitted that he had agreed with the Decree Holder to purchase the suit properties in presence of Shirish Jadhav, Sachin @ Balasaheb Jadhav and Sudhakar Kamble in the month of November 2018. On 15/08/2019, the agreement to sell was made in presence of above said witnesses by drawing terms and conditions.

02. The very essential term of the agreement was that "if the Decree Holder won the legal battle, then the objector will pay 20% less amount of market value of suit property and if the Decree Holder failed in the legal battle, then the objector will pay 50% less amount of market value of suit property to purchase the suit property." That time it was also agreed that the objector to repair the suit property. Accordingly, the objector inducted in the possession of the suit property by the hands of Decree Holder. He spend amount of Rs.8 lakhs on the repairs of the suit property. When Decree Holder got the knowledge that he has won in the legal battle, then the objector asked for execution for the sale-deed. However, Decree Holder

filed false suit bearing R.C.S. No.116/2021 against him by concealing the material facts from the Court. He instituted suit to deprive the objector from execution of the sale-deed of suit property.

03. He has valuable right in the suit property. So his presence is necessary in this execution petition. He should be heard before passing the order of possession in favour of the Decree Holder. Hence, he prayed for giving him the permission to lead evidence by framing issues.

04. The Decree Holder filed the say at Exh.137. He submitted that no such agreement was made with objector as alleged by him. He being the son of one of the Judgment Debtor, has filed false objection only to deprive the Decree Holder from testing the fruits of decree. The present execution petition is more than 10 years old. This objection is filed by Judgment Debtor through objector only to prolong the execution of the decree. Hence, prayed for rejection of the objection.

05. Heard both parties. The learned counsel for the objector argued that the Decree Holder has filed suit bearing R.C.S. No.116/2021 against him and his father on the ground that they are creating obstruction to the suit property. This means the objector is in possession of the suit property on the basis of the agreement drawn between the Decree Holder and the objector. He has incurred the expenses of Rs.8 lakhs on the

repair of the suit property. However, now Decree Holder has not kept his promise and thereby evaded to execute the sale-deed of suit property. He is in possession of the suit property. His right, title and interest is created in the suit property. Thus, opportunity of hearing in the form of leading evidence required to be given to him. In support of his contention, he relied upon the *ratio* laid down in ***Tanzeem-E Sufia Vs. Bibi Haliman & ors***, AIR 2002 SC 3083 and ***Bramhadev Choudhary Vs. Rishikesh Prasad Jaiswal***, AIR 1997 SC 856.

06. I have considered the submissions advanced by the objector. No doubt, this objector is the son of Radheshyam Ramdayal Bharadia who is one of the Judgment Debtors of this execution petition. This execution petition is filed against the firm namely M/s. Baldava & co. who was to tenant over the suit property. The trial Court decreed the suit bearing R.C.S. No.533/1991 on 25/03/2010 and directed to the Judgment Debtors to hand over the vacant possession of the suit property to Decree Holder. However, till today, the Decree Holder has not tested the fruits of decree. He has not got the possession of suit property till today. This execution petition is more than 14 years old. In this execution, it appears that Judgment Debtors have tried their level best to deprive the Decree Holder from testing the fruits of decree.

07. Now this objector moved this objection. The objector admitted that it is oral transaction between the Decree

Holder and objector. There are certain documents filed with list Exh.134. Document No.1 is the certified copy of the plaint of R.C.S. No.116/2021 which filed by present legal representatives of original Decree Holder. The above said suit is filed against Judgment Debtor No.8 namely Radheshyam Ramdayal Bharadia and present objector. I have perused the contents of the plaint. In the plaint, the plaintiffs mentioned that the defendants by entering into suit property, trying to encroach upon it. This means though the plaintiff mentioned that the defendants are trying to encroach upon the suit property but their contention is not that the defendants are in possession of the suit property. If Decree Holder would be in possession of the suit property then why there was necessity to file present execution and to pray for issuing possession warrant against Judgment Debtors.

08. When there was interruption of the defendants, then Decree Holder has moved above said suit against them. So this does not mean that the objector has entered into agreement to purchase the suit property with Decree Holder.

09. It is the contention of objector that he has spend huge amount on the repair of the suit property. He has not furnished a single document on record to show that he made expenses of Rs.8 lakhs on the suit property for repairing it. In the documents with list Exh.134, there is the copy of the written statement filed by then defendant No.2 and present

objector of this case. In his written statement, he mentioned that he is the real estate agent or doing real estate business. If he is doing real estate business then why he was not thought to execute the document of agreement to sell from the Decree Holder when he incurred the expenses of Rs.8 lakhs on the suit property. In his written statement, he has not mentioned about this transaction with Decree Holder. So such objection seems to be after thought objection only to deprive the Decree Holder from testing the fruits of decree.

10. Moreover, when there is agreement to sell of suit property in favour of objector then that document required to be reduced into writing but there is no such writing between the parties. Moreover, the objector mentioned that he is in possession of this suit property by way of agreement to sell of the suit property. If there are contents about the handing over the possession of the suit property then as per section 49 of the Indian Registration Act, 1908, no document required by section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall affect any immovable property comprised therein or confer any power to adopt or be received as evidence of any transaction affecting such property or conferring such power unless it has been registered.

11. However, there is proviso clause to section 49 which provides that, “provided that an unregistered document affecting immovable property and required by this Act or the

Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act or as evidence or any collateral transaction not required to be affected by registered instrument.”

12. The present execution is not for specific performance of contract. The present case is for execution of the order passed in R.C.S. No.533/1991. When the present execution is not for specific performance of contract then the contents of proviso clause to section 49 of the Indian Registration Act is not applicable to the present case in hand. So when the objector came with the case that he has entered into agreement then that required written document and when he came with the case that the possession is handed over to him then it required registration and in absence of registration of the document, no power is conferred upon to objector to get title in it.

13. Moreover, as per section 54 of the Transfer of Property Act, the contract of sale does not itself create any interest in or charge on such property. So contract of sale does not create any interest or charge of the objector on the suit property. So also there is no water in the objection taken by the objector. Thus, the objector has no title, interest in the suit property.

14. His contention is that he should be heard by giving

the opportunity of leading evidence and by framing issues. When there is no supportive document, when there is no written document and when that document is not registered document then if issues are framed and an opportunity to lead evidence would be given to objector then there will be a second round of litigation to the Decree Holder who got decree and who is now waiting for testing the fruits of decree.

15. No doubt, the Hon'ble Supreme Court in ***Bramhadev*** case cited supra held that objector need not to wait for dispossessing from the suit property and then to file objection under Order 21 Rule 97 of the CPC. I have great respect to this *ratio*. The objector moved objection as per Order 21 Rule 97 of CPC but as observed supra, there is no water in the objection of the objector. This objection needs to be rejected. Hence, application Exh.135 is rejected.

Barshi.
Date : 05/08/2024.

(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	:	05/08/2024
(d)	Judgment /Order signed by P.O. on	:	05/08/2024
(e)	Judgment /Order uploaded on	:	05/08/2024