

MHST070025352022



Order Below Exh. 18 in RD No. 47/2022
(Balkrishna Vishnu Patil Vs. Rameshwar Trimbak Swami)

This application is filed by the third party Krishna Charitable Trust, Malkapur under Order 21 Rule 97 of the Code of Civil Procedure for objection to the execution of the decree. It is contended that, the third party Krishna Charitable Trust, Malkapur is registered trust having registration number E-285. Said trust is owner of the land within the limits of village Malkapur, Taluka Karad, District Satara in Sy No. 144 to area 13 hectares 11 R having its boundaries as Pune-Bangalore National Highway on the east, Jakhinwadi-Koyna settlement on the south, the property purchased by the third party and Biroba Temple, on the west: Mauje Malkapur land number 148 and on the north, the area included in Karad-Dhebewadi road out of 144 A/1 and beyond that, the remaining area out of 144 A/1 and the area out of the plaintiff's land Sy. Nos. 261, 262 and 266.

2. It is further contended that, said property has been acquired and its map has been prepared and has been given to the possession of the third party through the Government. In the said

property, the Krishna Charitable Trust's Hospital and Medical College, Nursing College, Pharmacy College, and many other services are provided by the Trust to everyone from the poorest to the richest.

3. It is further contended that, the property of which the above mentioned 144/B was a part was Sy. No. 571 A at Kasbe Karad. The said property originally belonged to Shikhare who had mortgaged it to Yedge. The said mortgage was regarding the loan, Shikhare had filed RCS No. 162/1973 against Yedge in the Karad Court. The said Yedge sold the said mortgage to Sheikh Abdul Karim Suleman in order to obstruct said suit. While the said suit was pending, the government acquired the land and the above-mentioned property 144/B came into the possession of the third party.

4. It is further contended that, later on RCS No. 162/1973 was decided and Shikhare was given the right to take the land acquisition amount after calculating it. At the time of the said land acquisition, the land on the south side of the Karad-Dhebewadi road out of Sy. No. 571 A was given to the third party, so some property on the north side of the Karad-Dhebewadi road was left. Sheikh Abdul Karim Suleiman had transferred his mortgage rights to the defendant Nos. 1 and 2 and other persons. During his lifetime Sheikh Abdul Karim Suleiman had never owned any property and he was aware of

this fact.

5. It is further contended that, since the area acquired for the Karad-Dhebewadi road out of the above 571 A has not been reduced from that number yet, the area of 144 A/1 is unnecessarily seen as more. Taking advantage of this, the plaintiff has filed probate application No. 05/2016 on the basis of a false and forged will dated 01/10/2002 and obtained a probate certificate granting the area in 144 A/1 to the plaintiff. On the date of the said will, there was no property or right left in the name of Sheikh Abdul Karim Suleiman that could be transferred, nor did he have the right to dispose of such property by will.

6. It is further contended that, whatever rights he had regarding the acquisition of land in block number 144/1, he had given them during his lifetime. He had given them to his grandson Faizal Ismail Sutar before his death by verbal gift deed dated 21/4/2006. In this situation, the so-called will is null and void. Since the will on which the plaintiff claims the right does not mention how much and which quadrilateral area was given by the will, the plaintiff and the defendant cannot claim the specific area and the area of the specific quadrilaterals by calculating it on the basis of the compromise decree and such an order cannot be made by the Civil Judge in RCS No.

368/2017 in the absence of any documentary evidence.

7. It is further contended that, since the property in compromise decree in RCS No. 368/2017 does not exist and its map is not available, the said compromise decree is not enforceable. In the said RCS No. 368/2017, the Court passed the judgment and decree in which Karad- Dhebewadi road is shown towards the northern boundary of the property to be demarcated. Said property towards the south side of the Karad-Dhebewadi road is the subject of dispute. The said property in dispute is in Sy. No. 144/B in Malkapur.

8. It is further contended that, since the entire property on the south side has been acquired by the third party in the land acquisition, neither the plaintiff nor the defendant or both of them in RCS No.368/2017 have any ownership or possession over it. Also, the property of defendant Nos.1 and 2 has been shown towards the southern side of the said property. Therefore, it is clear from the description in the decree and application that the entire property of the plaintiff as well as defendant Nos. 1 and 2 is on the south side of the Karad-Dhebewadi road.

9. It is further contended that, since the entire property, i.e. the entire property on the southern side of Karad-Dhebewadi road is owned by third party, the decree issued by consent decree in RCS No.

368/2017 is obtained fraudulently and if implemented, it will cause irreparable loss to these third party. Therefore, the third party is compelled to file an objection to this application through this application.

10. It is further contended that, since the property mentioned in claim 1B in RCS No.368/2017 is not part of the property in 1A and is not owned by the plaintiff or the defendant. Therefore the decision given by the Court is completely wrong and was given without examining the documents. Therefore, the present darkhast is not enforceable.

11. It is further contended that, considering the area mentioned in as 27.4 R of the claim 1A, it appears that the plaintiff and the defendant have conspired to seize the property of a third party on the southern side of Karad-Dhebewadi road without informing them and without making the trust a party defendant. By keeping the Court in the dark about the area the decree holder has obtained the decree and filed this darkhast with the sole intention of grabbing the property of the third party/trust. Therefore, the implementation of the said application is opposed by the third party.

12. It is further contended that, the plaintiff/decreed holder has filed various complaints against this third party to the Revenue

Department and the police from time to time and these are pending. Similarly, the plaintiff/deed holder with the support of political leaders and on the basis of the deed in RCS No.368/2017 has tried to take possession of the area mentioned in the suit property by going on a hunger strike, advertising etc. and to evict the third party from his property.

13. It is further contended that, the third party has also tried to protect his property towards the southern side of Karad-Dhebewadi Road, by filing RCS No. 64/2019 before the Hon'ble Civil Judge Senior Division, Karad and in said case order is passed against the present deed holder. In such circumstances, by way of this application the third party is seeking an order declaring that only the property in Sy. No. 144/B Malkapur, adjoining the south of Karad-Dhebewadi Road, falls within the boundary and accordingly, the order dated 01/10/2002 regarding the will made in Probate Application No. 5/2016, is null and void as the testator Sheikh Abdul Karim Suleman does not have such testamentary capacity and therefore the deed and judgment passed in RCS No. 368/2017 is not enforceable. When the third party came to know about the deed in regarding the property owned by the third party without making the third party a party defendant he filed this objection. Therefore, the third party/trust

prayed to allow the objection application to the darkhast.

14. The decree holder objected the application by filing say (Exh.21). It is contended that, the application of the third party is false, fraudulent and misleading and is not acceptable. The application has been filed by the third party Krishna Charitable Trust, who has not filed any documents regarding whether the said Trust has given rights to the said person. Therefore, the application is required to be rejected

15. The decree holder further contended that, if the third party has any complaint regarding the will and the probate application, it has the full right and authority to complain in the superior Court. Therefore, the third party cannot make such complaints in present darkhast. Decree in RCS No. 368/2017 was and is approved on 26/03/2018 after a full trial. If the third party has a complaint regarding the said decree, it has legal right to appeal against the order passed. Therefore, the third party cannot raise any objection regarding the calculation of area in this darkhast.

16. The decree holder further contended that, the application filed by the third party under Order 21 Rule 97 of the CPC is not legally tenable as the decree holder has not made any claim for possession of the property. There was no complaint by decree holder regarding the land acquisition of the third party or the land acquisition

for the Karad - Dhebewadi road in the suit or in this darkhast. Therefore, the objection of the third party cannot be considered as part of this darkhast. Therefore, the objection application of the said third party is liable to be rejected.

17. The decree holder further contended that, the the suit property in RCS No. 64/2019 had no connection whatsoever with the applicant and his property. Therefore, the application of the third party which is without filing of any documents is liable to be rejected. This Court is not having any power to reverse the decree. Contending all these, the decree holder prayed to reject the application.

18. Heard Shri. A.T. Ghate learned counsel for the third party and Shri. G.P. Shinde learned counsel for the decree holder.

19. Learned counsel for the decree holder submits that, the application under Order 21 Rule 97 is not maintainable as in present darkhast is not filed for recovery of possession. He also submits that, the property which is subject matter of the execution and the property owned by the third-party are different and the third-party is not having any right in the property which is the subject matter of the present Darkhast. He also submits that, the executing court is expected to guard the decree holders right and wipe out flimsy, false, and vexatious pleas raised by the obstructionist. Therefore, the application

of the third-party is not maintainable. In support of his submissions he placed reliance on following judgments,

- I. Maharashtra Automobiles, Mumbai V/s. Navjivan Co-operative Housing Society Ltd. Mumbai, reported in 2011(3)Mh.L.J.
- ii. Dhanaraji Baburam Yadav and Ors, V/s. Ramakant K. Dhanawade and Ors., reported in 2003(2) Mh.L.J.

20. Per contra, learned counsel for the third party submits that, boundaries of the property mentioned in the present Darkhast are the boundaries of the property owned by the present third party. Therefore, the third party is aggrieved person who is legally entitled obstruct the Darkhast. In support of his submissions he placed reliance on following judgments,

- I. Judgment passed by the Hon'ble Bombay High Court in case of Shripati Ganpati Jadhav and Ors., V/s. Chandrakant Ganpatil Hadhav and Ors, while deciding Writ Petition No. 8056/2010.
- ii. Sardar Hasanbhai Attar v/s. Usman Papamiyaattar Shaikh and Ors., reported in AIR 208(NOC) 616(BOM): 2008(1) AIR BOM R 353.

21. This application is filed under Order 21 Rule 97 of the Code of Civil Procedure. Therefore, the first issue required to be considered is whether the application as it is filed is maintainable or not. Hon'ble Bombay High Court in case of *Sripati Jadhav (Supra)* in paragraph Nos. 8 and 9 has observed as under,

8. *In my view, the contention of the petitioner is meritorious and there is no merit in the contention of the respondents (decree holders). The contention of the respondents in the present case is squarely rejected by the Supreme Court in its decision in Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal & Anr. paragraph no.9 of the decision reads as under:-*

“In short the aforesaid statutory provisions of Order 21 lay down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree- holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the Executing Court as well as by the decree holder the remedy available to the decree-holder against such an obstructionist in only under Order 21 Rule 97 sub- rule (1) and he cannot bypass such obstruction and insist on re-issuance of warrant for possession under Order 21 Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order 21 Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the record of the Executing Court it is difficult to appreciate how the Executing Court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order 21 Rule 99, CPC and pray for restoration of possession. The High Court by the impugned order and judgment has taken the view that the only remedy available to a stranger to the decree who claims any independent right, title or interest in the decretal property is to go by Order 21 Rule 99. This view of the High Court on the aforesaid statutory scheme is clearly unsustainable. It is easy to visualise that a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance

before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order 21 Rule 99. Order 21 Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order 21 Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest dehors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order 21 and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him. With respect the High Court has totally ignored the scheme of Order 21 Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under Order 21 Rule 99 and he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings. The view taken by the High Court in this connection also results in patent breach of principles of natural justice as the obstructionist, who alleges to have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance would not be considered or heard or merits and he would be

thrown off lock, stock and barrel by use of police force by the decree- holder. That would obviously result in irreparable injury to such obstructionist whose grievance would go overboard without being considered on merits and such obstructionist would be condemned totally unheard. Such an order of the Executing Court, therefore, would fail also on the ground of non-compliance with basic principles of natural justice. On the contrary the statutory scheme envisaged by Order 21 Rule 97, CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the decree- holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the Executing Court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order 21 Rules 97 to 103 would remain a complete code and the sole remedy for the concerned parties to have their grievances once and for all finally resolved in execution proceedings themselves.

9. When a decree for possession of an immovable property is put in execution and a third person is in possession of the property claiming an independent right to possess, he can always resist the execution of a decree when the court bailiff comes to take possession. However, it is not necessary for him to wait till the bailiff armed with a possession warrant comes to recover possession. Often a bailiff does not receive or register an objection or obstruction to the execution raised by a third party and sometimes even Court passes an order of police aid ex-parte and possession is sought to be taken with the help of police aid without noting or recording an obstruction raised by a third party.

The third party who apprehends that his

resistance or obstruction to the execution of the decree would not be noted and registered by the bailiff or the officer enforcing the decree comes to the court even before the possession warrant is issued and makes an application raising and his objections to the execution of a decree, the application made by the third party ought to be treated as a resistance or obstruction to the execution of the decree for possession of an immovable property. Any reply which may be filed to such an application by the decree holder can be treated as an application for removal of the obstruction. Law does not require that resistance or obstruction to the execution of a decree has to be made only at the stage when the bailiff comes to the site for delivery of possession. The obstruction can be raised even earlier by filing an application and such an application would have to be decided by the executing court after giving an opportunity to the decree holder and all the concerned. So construed the application at Exhibit-26 made by the petitioners ought to have been treated as an obstruction or resistance to the execution and the reply by the respondent decree holder filed at Exhibit-37A ought to have been treated as an application for removal of the obstruction. So treated, the order passed by the learned executing court on 26 July 2010 was clearly appealable under Rule 103 of Order 21 of the Code of Civil Procedure.

22. Therefore, considering the observations made by the Hon'ble High Court in above-mentioned case, if a third party is claiming any right title or interest in the decreetal property, then he is having right to file application to obstruct the execution.

23. The Hon'ble Bombay High Court in case of **Sardar**

Attar(Supra) has also laid down that if any person is having rights in the immovable property, then the Court is required to adjudicate the matter on its merit. The third party is claiming that, he is having rights in the property which is the subject matter of the darkhast. Therefore, considering the laid down by the Hon'ble High Court in the cases relied by the third party, the application filed by the third party under Order 21 Rule 97 is maintainable. Therefore, there is no force in the submissions advanced on behalf of the decree holder that the present applicant is not entitled to file application for obstruction of the darkhast under Order 21 Rule 97 of the Code of Civil Procedure.

24. Learned counsel for the decree holder submits that the prayer made in the application by the third-party is not maintainable. As the third party rights are not affected and the decree holder is only praying for fixation of boundaries owned by him. However, as the third-party was not party in the suit, which is the subject matter of the Darkhast. Hence, there is no force in the submissions advanced on behalf of the decree holder.

25. Learned counsel for the decree holder submits that, third party is entitled only for 13 Hector and 11 R land. Except said land, the third party is not entitled for any rights in the said gut number. The third party has encroached over the land owned by the decree

holder. Therefore, total 48 R land in Gut No. 144/1 is not in possession of the owners of persons in said gut number in spite of existence of said Gut No. since 1965. Documents relied by the third party Xerox copies, which are not permissible in law. Therefore, said documents cannot be considered.

26. Per contra, learned counsel for the third party submits that, documents file on record are to substantiate the prima-facie claim of the third party. The third party is ready to deduce evidence as per law. The decree holder has specified the boundaries of property of the third-party in the present Darkhast and prepared false map and thereby causing obstruction to the third parties possession over the land in Gut. No. 144/2. Therefore, the third party is obstructing the present darkhast

27. The Hon'ble High Court of Bombay in case of ***Maharashtra Automobiles (Supra)*** has laid down that it is not necessary in each and every case to direct the parties to lead evidence and detailed inquiry under Order 21 Rule 97 (2) of the CPC is not necessary. The Hon'ble Bombay High Court in case of ***Dhanraj Yadav (Supra)*** has also held that executing Court is expected to be guard and expected to wipe out filmy, false and vexatious pleas raised by the obstructionist, when the litigant is aware of his rights of containing an issue, but does not

contain it by preparing other, it will have to be treated as waived. There is no dispute about proposition laid by the Hon'ble High Courts. Therefore, considering the laid down in aside cases now it is necessary to consider facts of the present case.

28. The decree holder is claiming right in the property as he has received the said property from Abdul Karim Sulaiman Shaikh. The third party has brought on record documents showing the entitlement of said Abdul Karim Sulaiman Shaikh in the land Gut No. 144 which was previously as a land Sy. No. 571. On care of the mortgage deed of year 1938, it appears that Vithal Balakrishna Sikhare and others have mortgaged land in Sy. No. 571 to Bhau Nagu Yedge and others to the extent of 29 acres and 29 R.

29. However, in 'Bechain Patra' of year 1970 shows that said Bhau Nagu Yedge and others have executed documents in respect of 34 acres and 24 R land in Sy. No. 571 which is more area that the area for which mortgage was made by original owners Balkrushna Shikhare and others. Decree in RCS No. 162/1973 shows that portion of Sy. No. 571 which is converted into Gut No. 144 was acquired and the possession thereof was handed over to the third party. The documents of the land acquisition proceedings also shows that said portion was acquired and the third party was put in possession over said land.

30. The present darkhast is filed for fixation of boundaries of following land in Gut No.144/A/1

Towards east- Remaining property,

Towards South- Property owned by the defendant Nos.1 and 2.

Towards West- Remaining property,

Towards North- Karad- Dhebewadi Road.

31. Considering the boundaries, it appears that the decree holder is claiming to fix the boundaries of Gut No. 144/A/1 and Karad- Dhebewadi Road is towards north side of the property. However, the decree holder is claim rights from Sheikh Abdul Karim Sulaiman on the basis of will. On careful result of said, will, it appears that boundaries of the property which is granted to the decree holder are not specified. In probate proceedings also boundaries of the property are not specified for which the probate was granted. However, in the suit RCS No. 368/2017, which is the subject matter of the present Darkhaast the decree holder has specified the boundaries. Learned counsel for the decree holder submits that boundaries are specified on the basis of the possession of the decree holder.

32. Record shows that Karad- Dhebewadi Road is shown towards the northern side of the suit property. However, the maps

brought on record for the acquisition of land which is of this year 1970 shows that said Karad- Dhebewadi Road is towards Northern side of the property of the third party. Map filed on record by the third-party, which is prepared at the instance of the present decree holder on 20/11/2018, show that the land in Gut No. 144/A is situated towards the southern side of the Karad- Dhebewadi Road.

33. Therefore, it is seen that there is contradiction between the government map prepared during the acquisition proceedings and the map prepared at the instance of the decree holder and boundaries of the property, which is the subject matter of the present Darkhast overlaps with the boundaries of the property of the third-party. Admittedly, third-party was not made party in the RCS No. 368/2017 for which the present Darkhaast is filed. It is the apprehension of the third-party that by specifying the incorrect boundaries, decree holder is trying to interfere in the property of the third party. Hence, it can not be concluded that the apprehension of the third party is without any basis.

34. Therefore, after considering the entire material brought on record by the parties, I am of the view that, if the Darkhast is executed, then the third party can be affected. Hence, before the execution of the darkhast claims of the third-party as regard to the

rights, interest and title in the decreetal property needs adjudication. Therefore, claim of the third-party for obstruction of the darkhast cannot be said to be false, filmy and vexatious. Hence, on considering the material brought on record by the parties, it is necessary that direction to the parties to us for adjudication of the claims made by the third party is necessary. Therefore, facts of the cases cited by the learned counsel for the decree holder and present case are different. Therefore, with all respects, said case laws relied by the learned counsel for the decree holder are not applicable to the facts of present case. The third party will be affected by the execution of the decree. Hence, there is no force in the submissions advanced on behalf of the decree holder about the entitlement of the third-party to obstruct the present Darkhast. Therefore, it is necessary to frame issues and direct the parties to adduce evidence in respect of entitlement of the rights of the third party in the property which is subject matter of the darkhast. In the result I pass following,

ORDER,

Parties is the directed to file on record draft issues for adjudicating the claim of the third-party.

Date : 11/07/2025

(Prashant P. Kulkarni)
4th Jt. Civil Judge Junior Division,
Karad.