

ORDER BELOW EXH.43 IN RD No.7/2018

Jakir Shah Vs. Himmat Shah

Applicant has filed this application and submitted that the D.H. has filed this execution petition for execution of the decree dated 30/11/2025 passed in RCS No.23/2011 against the J.D. The original J.D. died leaving behind the objector as one of his legal heirs. It is submitted that the objector is presently in peaceful and lawful possession of the suit property bearing survey No.57, plot No.05 at village Malegaon in the capacity of a legal heir. The objector was not a party to the original suit and no decree was ever passed against him. The execution of the decree against the objector who is in possession as a legal heir is not legally permissible unless there is specific directions in the decree against him. As per the settled legal principles possession of the legal heir can not be disturbed through execution proceeding unless the decree is specifically enforceable against such heir. Therefore, any attempt to execute the decree against the objector is unlawful and beyond the scope of the decree and is not executable under the law. The present objection raises a substantial question regarding the execution of the decree which falls within the scope of section 47 of CPC. As held by Hon'ble SC in Silverline Forum Pvt. Ltd. v. Rajiv Trust (1998) 2 SCC 723 which held that where a person in possession is not bound by the decree, the decree holder must institute a separate suit for recovery of possession. Therefore, in the interest of justice prays to dismiss the execution petition.

2] On the other hand D.H. has filed his say and strongly opposed the application. D.H. has filed present execution petition I according to the judgment and decreed passed by the Court. The

plaintiff i.e. D.H. has filed suit in the Court. The Court partly decreed the suit and declared the plaintiff as the owner of suit property plot No.5 Survey No.57 situated at Malegaon and directions were given to J.D. to hand over the possession of the suit property within 3 months. Therefore, the present application under section 47 of CPC is not applicable in the present case. Therefore, prays to reject the application with costs.

3] Heard both the sides. It appears that it is the contention of present applicant that the plot in question is in their possession. They are legal heirs of deceased Himmat Shah. It is also submitted that the applicants were not party to the original suit. Decree was passed against them. Therefore, the present proceeding can not be entertained because there are more specific directions in the decree that same is executable against the LR's also.

4] Admittedly the present D.H. has filed RCS No.23/2011 against the J.D. namely Mehbud Shah, Ashapak Khan and Himmat Shah. As per the decree in said proceeding directions were given to the defendant No.3 Himmat Shah who removed his structure over the suit plot within a period of three months. No doubt present applicants were not party to the said proceeding. However, admittedly the present applicants are legal heirs of deceased Himmat Shah. The present applicants have themselves submitted that the plot No.5 i.e. the suit property is in their possession in the capacity of legal heirs of deceased defendant Himmat Shaha. Therefore, certainly the decree is binding on them. So considering this fact I came to the conclusion that the present objector/ applicant can not raise objection regarding tenability of present proceeding as per Section 47 of CPC. Hence, the application is

liable to be rejected. Therefore, I pass following order

ORDER

Application is rejected.

Washim.

Date:- 02/01/2026.

(S. S. Sahasrabudhe)

Civil Judge (Sr. Div.), Washim.

C E R T I F I C A T E

I affirm that the contents of this PDF file judgment/order are same word to word, as per original judgment/order.

- 1) Name of Stenographer :- S. V. Dere (Stenographer G-III)
- 2) Name of Court :- Civil Judge (S.D.), Washim.
- 3) Date :- 02/01/2026
- 4) Order signed by the
presiding officer on :- 02/01/2026
- 5) Order uploaded on :- 03/01/2026