

**ORDER BELOW EXHIBIT No. 64.**

[Passed on 05/12/2020]

(CNR No.MHWS07-001558-2014)

1]. The instant application/objection is filed by the applicants Tejas Chaware, Swarupa Sakade and Shrutika Nandgaonkar under Order 21 Rule 97, 98 and 101 read with section 151 of the Code of Civil Procedure, 1908 (for short' the C.P.C.'). Perused the application and say filed by the decree holder.

2]. Before going into merit and demerit of the objection it will be worthwhile to mention here the background of the case. The original plaintiff Ravindra Ramasa Chaware i.e. decree holder in the present matter filed suit bearing R.C.S. No.03/1991 against the judgment debtors claiming eviction and recovery of possession along with a relief of arrears of rent and mesne profit. The said suit was decreed by this Court on 26/09/2014. Thereafter, the decree holder filed this execution proceeding for getting fruits of the decree. On 06/01/2016 possession warrant was issued in the present matter. Subsequently, bailiff of this court along with possession warrant visited the disputed property with the decree holder to give possession of the same to the D.H. However, bailiff filed the said possession warrant and Panchnama contending that on 12/01/2016 at 12.20 p.m the judgment debtors were absent on spot. Hence, he has given intimation of said possession warrant and asked to vacate and give possession of suit shop to the persons present over their. However, they have denied for the same and on inquiry they did not tell their names. Moreover, near about 50 to 60 peoples were gathered. Out of said peoples, Romil Arvind Lathiya came in front of shop and told that they will not hand over possession of said shop. The said peoples have abused and peoples from shop closed shop and fix lock in presence of Panch witnesses.

3]. Thereafter, on 01/12/2018 the present applicants have filed this application. They have contended that the non-applicant is their real uncle as they are legal heirs of Kamlakar Ramasa Chaware and non-applicant is real brother of deceased Kamlakar. Applicant No.1 was one of the obstructionist in execution process of possession warrant dated 12/01/2018. Therefore, the applicants have cause of action to file the present application.

4]. It is further submitted by the applicants that there was partition in the year 1960 in respect of present property i.e. Nazul Plot No. 176, sheet No. 18-D, ward No. 20, house No. 262 ad-measuring 1350 sq. ft. situated at mauje Karanja, Tq. Karanja. Dist. Washim. It is the ancestral property of the applicants in respect of which partition was occurred in the year 1960, but as per terms of partition 25% share out of said property was agreed to be given to the deceased father of the applicants by the non-applicant. However, the non-applicant made breach to that promise inspite it the non-applicant trying to take undue advantage of the case of deceased father of the applicants and trying to encroached upon the interest and right which are still subsisting 25% in the said property for which the present execution process is initiated by the non-applicant. But it is also pertinent to be mention here that even there was partition in respect of said property and said was allotted to the share of non-applicant, even though there was specific promise by the non-applicant to give 25% share to the deceased father of the non-applicant.

5]. However, after death of father of the applicants the non-applicant with malafide intention to deceive these applicants and with malafide intention for not to give share of 25% in accordance with the partition and according to promise made by the non-applicant at the time of partition and now this non-

applicant is recile from promise and thereby trying to grab the share of the present applicant. Therefore, the cause of action is arisen in the month of November 2018 when the non-applicant denied fulfilling the promise to give 25% share in respect of the property in question in present application according to the promise made to deceased father of the applicant.

6]. Further, the non-applicant has filed RCS No. 03/1991 wherein the court pleased to pass judgment and decree on 26/09/2014. Further, the property mentioned in the present execution case i.e. Nazul Plot No. 176, sheet No. 18-D, ward No. 20, house No. 262 ad-measuring 1350 sq. ft. situated at mauje Karanja, Tq. Karanja. Dist. Washim having four boundaries as under : -

East : Bombay cycle shop

West : Saloon

North : Main road

South : Kirti lodge

This property was in the name of Ramasa Padmasa Chaware for which father of the applicant/objectors namely deceased Kamlakar Chaware was receiving rent from said property since 31/03/1989 from Nirmalabai and said fact is admitted by the non-applicant in his cross-examination in RCS No. 03/1991. All these are relevant facts regarding RCS No. 03/1991 has been told by the non-applicant to the deceased father of the applicants and he told these facts to them. Therefore, the applicant came to know about property dispute i.e. question in RCS No. 03/1991.

7]. It was agreed between the non-applicant and applicants that the non-applicant will give 25% share which the applicant are legally entitled to receive from the Nazul plot No. 176, sheet No. 18-D as stated above the

description of the same. But the non-applicant has broken the promise and not given the share of 25% out of the above stated property and directly insisting for possession warrant of said property.

8]. Therefore, these applicants having severe apprehension in their mind that, the non-applicant is possessing malafide motive to grab the above stated property by obtaining possession warrant from the Hon'ble court for which the non applicant exclusively not entitled. Therefore, the present applicants are seeking temporary injunction in respect of execution warrant in respect of above stated property.

9]. These applicants also praying to this Hon'ble court that above stated property for which the Hon'ble Court pleased to pass judgment and decree on 26/09/2014 that judgment and decree was only about whether the tenants have to be removed from the property or not, because that suit i.e. R.C.S. No. 03/1991 was for eviction, possession, arrears of rent and mesne profits. Therefore, that suit itself was not for deciding any title or ownership in respect of property. Therefore, that property is still standing in the name of grandfather of applicants namely Ramasa Padmasa Chaware and the present applicants are the legal heirs and having vested interest, rights, title in said property, therefore the court may kindly direct the inquiry under Order 21 Rule 97, 98 and 101 in respect of right, title and vested interest of these applicants in above stated property and till then Hon'ble court not to issue any sort of possession warrant in respect of Nazul plot No. 176, sheet No. 18-D, ward No. 20 house No. 262 ad-measuring 1350 Sq. ft. situated at mauje-Karanja, Tq. Karanja Lad, Dist-Washim in the interest of justice.

10]. The proceeding under Order 21, Rule 97 to 101 is a proceeding

like suit, therefore there is no need to file separate suit as well as there is no need to file separate application for temporary injunction in the present application, the Hon'ble court is vested with the power to grant injunction. The applicants have prima facie case, as they are being direct concern with the above stated property, also balance of convenience lies in favour of applicants. If the court issued any possession warrant without inquiry in respect of right and title then these applicants will have irreparable loss to their rights and vested interest from the property and the non applicant will grab the same which cause the multiplicity of proceeding and unnecessary hardship upon these applicants. Hence, the applicants prayed for allowing the application.

11]. The D.H. /non-applicant filed his reply to present application vide Exh. 65 and denied each and every adverse allegations against him. He admitted that he is real uncle of the applicants and brother of deceased Kamlakar Chaware. He also admitted that there was partition effected in the year 1960 in respect of said property and it is ancestral property. He further admitted description of the property. He further submitted that the non-applicants have no concern with suit property nor he is obstructionist in execution process of possession, but only with an intention to harass the D.H. intentionally he moved this application. If he was obstructionist in execution process dated 12/01/2018 certainly he would have moved said application immediately, but he filed this application on 01/12/2018 after near about 11 months which clearly goes to show that application is false and concocted.

12]. Admittedly, R.C.S. No. 03/1991 was filed by the D.H. in the year 1991 and at that time deceased Kamlakar Chaware i.e. father of the applicants was alive till 22/09/2013, but never raised this objection nor join the suit as

plaintiff, because he was fully aware that he has no share in the suit property but after the death of father applicants are trying to harass the D.H.

13]. It is specifically submitted that in alleged partition, suit property was come to the share of non-applicant in the year 1960 and since then he is owner of said property. Further, non-applicant filed R.C.S. No. 03/1991 for eviction and possession which is decreed by the Court in the year 2014, but during this near about 13 years neither deceased Kamlakar nor applicants raised objection that they have share in suit property, which clearly goes to show that non-applicant is only owner of said property.

14]. The non-applicant is senior citizen and waiting for justice since last 20 years for reaping the fruits of decree. Further, deceased Kamlakar is now no more and applicants are not possessing any legal heir certificate to show that they are legal heirs of Kamlakar Chaware. In such circumstances they have no right to file instant application. On this count also application is not tenable and liable to be rejected. In such circumstances if application is rejected no loss will cause to the applicants on the contrary if application is not rejected irreparable loss will be caused to the non-applicant.

15]. That applicant has pleaded that R.C.S. No. 03/1991 was only for eviction, possession and mesne profit and in such circumstances if decree is executed no loss will be caused to the applicant and he will have every right to file Civil suit for claiming share of his father in suit property if any. The applicant has no right to file an application under Order 21 Rule 97, 98 and 101 read with section 151 of the C.P.C. The applicant is also fully aware about this fact in spite of this he filed instant application to linger the proceeding and

harass the non-applicant. Hence, considering the same he prayed for rejection of the application.

16]. Perused the documents on record. Heard the learned advocate Shri. N. D. Borkar for the applicants and Shri. D. G. Wadekar for the non-applicant/D.H. at sufficient length. On the basis of material on record and argument from both side following points arise for determination and I have recorded my findings thereon with reasons.

<b><u>Sr. No.</u></b>	<b><u>Points</u></b>	<b><u>Findings</u></b>
1].	Whether the applicants have made out case for passing order in their favour ?	No.
2].	What order?	Application is dismissed.

### **REASONS**

#### **Point No. 1 :-**

17]. Perused the documents filed by the applicants. They have filed copy of application U/Sec.2 (1) of the Bombay Regulation, copy of objection taken by D.H. in the said application, copy of appeal filed by D.H. before D.S.L.R. Washim, copy of agreement between the applicants and D.H. and copy of plaint in Spl. Civil Suit No.02/2018. Heard both the sides at sufficient length. The learned advocate for the decree holder Shri. D. G. Wadekar argued that the documents filed by the applicants are not having any evidential value. The said judgment is of the year 1991. The deceased Kamlakar was having interest in the said judgment. He died in the year 2013. However, he has not taken any objection in the said suit or in the present execution proceeding. Further, provision of Order 21 Rule 97 of the C.P.C. is not for third party. Hence, the applicant Tejas has no right to file the present application.

18]. Moreover, there is no dispossession. The present application is filed to linger and to give harassment to the decree holder. Furthermore, the applicant Tejas has not resisted the possession warrant. Perusal of Panchnama (Exh.25) does not show name of applicant Tejas. The applicants are claiming that they are having 25% share in the suit property. However, there is nothing on record to show the same. Moreover, father of the applicants have not resisted the decree from the year 1991 to 2014. Hence, the present application is not tenable. Further, bailiff has filed his report on 12/01/2018 but the present application is filed on 01/12/2018. It means that the applicants have waited for 11 months. The learned advocate for the decree holder in support of his argument relied on judgment of the Hon'ble Supreme Court in **Satyawati Vrs. Rajinder Singh and another (Mh. L. J. -2014(1) Page No. 624)**. I have gone through the said authority. The Hon'ble Apex Court in the said judgment held that there should not be unreasonable delay in execution of a decree. I have decided the present application keeping in mind the said ratio.

19]. On the contrary, the learned advocate for the applicants Shri. N. D. Borkar argued that the suit property was come in the share of deceased Kamlakar. Thereafter, there was family settlement between Kamlakar and Ravindra. Further, admittedly the suit property is ancestral. Moreover, the documents filed by the applicants shows that some property remained to be partition. However, the decree holder have taken mis-use of mutation entry and it has some substance. Therefore, the applicants have filed the present application. The present objection must be decided prior to further proceeding. The learned advocate for the applicants further argued that there is amendment in Order 21 Rule 97 of the CPC. Now, every question must be decided in execution proceeding itself. In support of his argument he relied on judgment

of the Hon'ble Supreme Court in **Shrinath & another Vrs. Rajesh & others (MHLJ-1998(3))**.

20]. I have gone through the said authority. The Hon'ble Supreme Court in the said judgment in Para No. 10, 14, 16 and 17 have discussed in detail about Order 21 Rule 97, 99 and 101. The Hon'ble Apex court has held that the right of a tenant or any person claiming a right in the property on his own of the property in case he resists, his objection under Order 21 Rule 97 has to be decided by the executing court itself. However, with most due respect to the said authority it is important to note here that facts of the present case are different from facts of the cited judgment. In the said judgment delivery of possession to decree holder was resisted by a tenant who was in possession of disputed property. However, in the case in hand the applicants are not in possession of the suit property. The applicants are claiming that they are having 25% share in the said property through their father. Hence, considering the said fact I am of the view that the applicants will not get any benefit from the said authority.

21]. The Hon'ble Punjab and Haryana High Court in **Bikram Singh Vs. Surjit Singh and Others** [Civil Revision No. 2387 of 2004] has held that *the Petitioner has no vested right to insist that the executing court must frame issues before the execution proceedings are adjudicated upon - Purpose of granting an opportunity to prove his case to an objector while entertaining objections under Section 47 read with Order 21 Rules 97 to 108 of the Civil Procedure Code does not amount to permission for abusing the process of law or court*. Considering the said ratio I have decided the present application.

22]. In the case in hand it is important to note here that execution process of possession warrant and panchnama is of dated 12/01/2016. However, the applicants have wrongly written it as 12/01/2018. The D.H. has also not taken objection in respect of the same. However, it means that the applicants have filed the present application after near about 03 years. Further, the decree holder has filed the original suit in the year 1991 and Kamlakar died in the year 2013. So, question remained unanswered as to why deceased Kamlakar has not taken objection in the said suit. The applicants alleged that deceased Kamlakar was receiving rent of said property from 31/03/1989 from Nirmalabai. However, receiving only rent does not mean that Kamlakar was owning the whole property. Further, there is nothing on record to show that the non-applicant has promised to give share of 25% out of the said property. There is delay of near about 03 years for filing this application from alleged obstruction. It creates doubt whether the applicant was obstructionist or not.

23]. Moreover, the bailiff has not written name of the applicant who is close relative of the D.H. The applicants have filed copy of agreement dated 11/09/2015 executed between the applicants and the D.H. However, this document is not having any evidential value. Moreover, even if it is presumed that the applicants are having their shares in the suit property then also they can claim their said rights separately. Further, the decree holder is fighting the legal battle from many years. Therefore, considering facts and circumstances of the case I am of the view that the present application is not having merits liable to be dismissed. Hence, I answer Point No.1 in the negative.

**Point No. 2 :-**

24]. From finding of Point No. 1, I am of the considered opinion that the application deserves to be dismissed. So, accordingly I record my finding

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to Point No. 2 and proceed to pass the following order.

**ORDER**

1. Application/objection (Exh.64) is hereby dismissed.
2. No order as to costs.
3. Decree be drawn up accordingly.  
(Pronounced in open Court.)

Date:- 05/12/2020.

Place:- Karanja

Civil Judge J.D., Karanja.

District-Washim.

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**CERTIFICATE**

I affirm that the contents of this P.D.F. file Judgment/  
Order are same word to word as per the original order.

Name of Steno. :- N.L. Jamnik (Steno-L.G.)

Court Name :- Civil Judge (Jr.Dn.) and J.M.F.C.,  
Karanja. Dist. Washim.

Date :- 05/12/2020

Order signed by the :- 05/12/2020  
presiding officer on

Order uploaded on :- 05/12/2020