



RD No. 06/1999
Ramkrushna Vs Narayan
CNR No. MHWS080000611999

ORDER BELOW EXH-56

This objection petition is filed by the third party i.e. the sister of J.D. under Order XXI Rule 97 r/w 151 of the CPC. The Objector and J.D. are the legal heirs of the deceased Kisan Payghan and Girijabai Payghan who died long ago intestate. Deceased Kisan was the father and Girijabai was the mother of the objector and J.D. The subject matter property including the suit land in Gat no. 241 (Old Survey No. 94/1) ad-measuring 2 H. 71 R. land was owned and possessed by the deceased father of the objector. After the death of father and mother of objector, the J.D. and the objector had acquired the title over the said property by inheritance. Their names were also duly mutated in the revenue records as legal heirs of the deceased Kisan and Girija Payghan.

02 Being a married sister of J.D., the objector had undivided interest in the property with J.D. Since long, the J.D. is cultivating the land without any interruption. The J.D., and objector jointly owned the ancestral land, and there are no other share in it. The J.D., not partitioned the said land in spite of several request by the objector till today. The land is still undivided. She has undivided share as a co-owner and having constructive possession over the suit land. Recently, on dated 18.07.2021, she came to know through her son Ramesh that, the J.D. had executed one illegal agreement to sale of 81 R. land out of the land in Gut no. 241 in favour of predecessor

of the D.H. namely Ramkrushna. On the basis of illegal agreement and illegal documents, the Decree came to be passed and being sustained till the Hon'ble Apex Court. But, by virtue of succession, the Objector is Joint owner of the ancestral property. Her name is also duly mutated in the revenue record long ago. No lawful partition had ever taken place. So, the J.D. alone had no authority to execute agreement of sale. So, the decree is not binding on her.

03 She resides at long distance. No intimation or notice is given to her. So, the agreement or decree is not binding on her. She cannot be deprived off her lawful interest without hearing and without adjudication of her claim of undivided interest. Her name is mutated in revenue record long back, but she was not made party to the suit. So, the decree is not binding on her. The execution is going to seriously prejudice her lawful rights. Her claim of partition and separate possession is necessary to be adjudicated. Otherwise, irreparable loss will be caused to her.

04 The D.H. was having knowledge about the co-ownership of the objector. He was in service as Talathi and the custodian of the revenue record of the land in question at the relevant point of time. In spite of the knowledge about joint family and ancestral property, the D.H. executed the alleged agreement illegally. The decree is nullity and not executable until adjudicating her interest in respect of partition and separate possession over the land Gut no. 241. The father of objector was died in the year of 1952 and the alleged agreement executed between DH and JD on dated 12.11.1991. At that time, the objector was co-owner of land Gut no. 241. But, she

and her mother are not the party of the agreement. So, the said agreement, the proceeding and the decree passed is not binding on the objector.

05 On dated 18.07.2021, her son visited at the Chikali where the suit land is situated. He got knowledge of the proceeding of court from villagers. He and objector made further enquiry and came to know that the J.D. had executed one agreement in the year of 1991 and on that basis the decree had been passed by court and execution proceeding is pending. The suit land is ancestral property owned and possessed by the deceased Kisan during his lifetime. He died intestate in the year of 1952. Deceased Kisan and his wife Girijabai died intestate. The objector being married daughter of deceased Kisan and Girijabai, is the coparceners in the ancestral land. Being married sister of J.D., she is having vested interest in the said land. She had made several oral specific demand for her share, but the J.D., without any right or authority, using her share and executed illegal agreement. So, the agreement is not binding on her.

06 She is illiterate lady and residing at remote place, i.e., in Hingoli District. During lifetime, her deceased mother and father were residing with J.D. So, the land remained under the possession and control of J.D. She had entrusted her share with J.D., with trust and belief that he will take care of her rights and interests. She was neither made party to the proceedings i.e., RCS No. 138/1992 though she is co-owner, inspite of attaining majority at the time of agreement in the year of 1991, nor she had expressly relinquished her share in the ancestral land. The alleged agreement executed only

to defeat her bona fide claim. No opportunity was given to her for hearing in the proceeding instituted by the D.H. So, the agreement and the decree passed in the RCS 138/1992 is void ab initio and not binding on her and liable to be declared as null and void.

07 The J.D., is also not giving any income to her arising out of her share in the ancestral property. The objector has no alternative than claiming her equal share by way metes and bound of partition of the said land and separate possession thereof. She has strong prima facie case, the balance of convenience lies in her favour. If the objection is not adjudicated, she will be highly prejudiced and suffer irreparable loss. On the other hand, no prejudice would be caused to D.H. and J.D. Hence, She prayed for full fledged inquiry in respect of her claim and prayed for opportunity to lead evidence and also prayed that the execution of the decree be kept in abeyance till the hearing and adjudication of her objection.

08 On the other hand, learned advocate for D.H. resisted the application vide exh-67 and denied all the contention of objector. According to them, the J.D. had filed so many applications for obstructing the execution proceeding through himself and through his relatives. The objector is not party to the main suit. All question raised by J.D. and suit or appeal are decided till Hon'ble Supreme Court. So, the question of filing objection is not legal and liable to be dismissed forthwith. The objector is not the party of execution proceeding and main suit. She has no locus standi to file objection. The objection is misconceived and filed to prolonged the matter. The objection cannot be investigated in this execution proceeding. It will

be registered as separate investigation. If the objection is allowed, the DH will suffer irreparable loss. The objector has no any right, title or interest over the suit property. The objection is filed only to harass D.H. So, they prayed for rejection of objection.

09 Heard both the parties at length. Following points arise for my determination. I record my findings along-with reasons thereon as under:

POINTS		FINDINGS
01.	Is the objection petition is tenable ?	...No.
02.	What order ?	...As per, final order.

Reasons

10 Heard both the parties. Learned advocate for the objector also filed written notes of argument vide exh-72. However, JD did not file any say nor advanced any arguments. According to the learned advocate for objector, the objector is the real sister of JD. She is having undivided share in gut no. 241 ad-measuring 02 H. 71 R. land. Out of which, 81 R. land is disputed, which is illegally sold by J.D. to D.H. without consent of objector. Unless and until the share of objector is crystallized or specified, the execution of decree could not be done properly and legally. The decree is not binding on objector. So they prayed for allowing the application.

11 On the other hand learned advocate for D.H. argued that, the RCS no. 138/1992 is filed for specific performance of contract. It was decreed on dated 16.11.1998. Then, RCA no. 99/1998 was allowed partly. Then, Second Appeal no. 156/2002 was filed before

Hon'ble High Court. Hon'ble High Court enhanced the earnest amount upto Rs. Fourty Thousand. Then, J.D. preferred appeal to Hon'ble Supreme Court. Hon'ble Supreme Court granted specific performance for execution of sale deed by enhancing the amount upto Rs. One lac.

12 According to them, under Order XXI Rule 97 the partition could not be done. The objector has to filed separate suit. Gut no. 241 ad-measuring 02 H 71 R. land, out of which only 81 R. land is disputed. It is not clear that, when objector become share holder. The JD i.e., defendant in RCS no. 138/1992 is also silent regarding the share of objector. The name of D.H. is not appeared on 7/12 extract, due to Section 157 of Maharashtra Land Revenue Code. Agreement to sale is of dated 12.11.1991. At that time, the name of objector is not appeared on 7/12 extracts or anywhere at the time of execution of sale deed no. 1241/1999 on dated 01.04.1999, through Court. The J.D. never claimed that, the suit land having undivided share of his mother and sister. This fact is not mentioned in agreement to sale.

13 Moreover, in RCS no. 138/1992 there is no issue framed in respect of ancestral property. In that suit, the evidence of J.D. is at exh-47. It is not mentioned in it that, the suit property having share of his mother and sister. There is no plea of joint property. The judgment in RCS no. 138/1992 is clear in that regard. In appeal, the 7/12 extract is filed by JD and his relative. On that 7/12 extract the only name of Girjabai is appeared. The co-owner ship is not held by any Court in this matter. So, they prayed for rejection of this

objection.

14 Learned advocate for objector relied upon **Sardar Hansabai Attar Vs. Usman Papamiya Attar 2008 (1) Mh.L.J 340** stating that, when there is an objection as to delivery of possession the adjudication of claim even by third party, who may or may not be in possession, then the application or objection is held to be maintainable. They also relied upon, **Bhramhadeo Choudhary Vs. Rishikesh Jaiswal 1997 (1) Mh.L.J. 817** stating that, even a stranger to a decree, who has grievance then, his grievance can be adjudicated upon, before the actual delivery of possession to the decree holder.

15 They also relied upon, **Uttam Kadam Vs. Smt. Hajira Begum Nisar and Others 2012 (3) All MR 641** stating that, an appeal by obstructionist i.e., purchaser pendente lite against order passed in execution proceeding. The trial court nullifying the right of appellant obstructionist in the touchstone of provision which is non-existence on account of deletion by amendment i.e., Rule 102. It was held that, the appeals relegated back to lower appellant for afresh decision i.e. for de novo consideration.

16 They also relied upon, **N.S.S Narayana Sarma Vs. Goldstone Exports Private Ltd. 2002 AIR (SC) 251** stating that, when any person claiming title to the property in his possession, obstructing the attempt by the decree holder to dispossess him from the said property. The executing court is competent to consider the question raised by the persons offering obstruction against execution

of the decree and passed appropriate order under Order XXI Rule 103 to be treated as decree.

17 They also relied upon, **Anwarbi Vs. Pramod D.A. Joshi 1999 AIR CJ (SC) 67** stating that the person is possession of immovable of property claiming legal entitlement and obstructing execution of a decree for a possession, it was held that, it is for the decree holder to take proper steps under Order XXI, Rule 97 for removal of obstruction and to have rights of the parties including obstructionist be adjudicated under order XXI Rule 103. The decree holder cannot take possession unless such proceeding terminate in his favour.

18 On the other hand, learned advocate for DH relied upon **Laxman Bala Surve Vs. Ms. Posh Builder, Bombay and ors. 1996 2 Mh.L.J 858** stating that, objections envisaged by rule 102 are objection in regard to the executability of decree and not with regard to the validity of the decree. Executing court cannot go behind the decree. Mere pendency of suit for setting aside a decree on allegation that it was obtained by fraud or misrepresentation per se does not affect the validity and executability of the decree.

19 They also relied upon, **Krushna Kashinath Patil Vs. S. Mohandas Kamath 2002 (2) Mh.L.J. 924** stating that, the executing court cannot go behind decree unless the decree passed is nullity. A decree is said to be nullity, if it is passed by a Court having no inherent jurisdiction. Mere because the court erroneously passed a decree or there is an error while passing a decree, the decree cannot

be fraud a nullity.

20 Considering submission by both the parties and perusal of record shows that, present execution petition is filed on dated 23.02.1999. Record also shows that, J.D. appeared and filed say. The proceedings and filling of suit before this court and the judgement and decree till apex Court is not disputed by JD. The objector also not disputed it. It only her say that she was not made a party to the proceedings. She does not have any knowledge about the proceedings. According to her, she got knowledge through his son in the year 2021.

21 Record also shows that, vide exh -16 the mother of J.D. by name Girjabai filed similar objection under Order XXI Rule 97 r/w 151 of CPC. After hearing both the parties my learned Predecessor passed order on dated 29.04.1999 and reject that objection. It also appears that, an appeal was preferred as RCA no. 99/1998 and prayed for stay of execution of judgment and decree passed in RCS no. 138/1992. Hon'ble Additional District Judge, Washim stayed the execution for delivery of possession. But, there was no stay to the decree of execution of sale deed.

22 Record also shows that, in appeal, the decree in RCS no. 138/1992 is modified and instead of granting specific performance, a decree for refund of earnest amount was passed. It was challenged in the Second Appeal before Hon'ble Bombay High Court, Bench at Nagpur, which was also allowed on dated 07.11.2014 and the earnest amount was enhanced upto Rs. 40,000/-. Record also shows

that, JD preferred appeal to Hon'ble Supreme Court vide appeal no. 2350/2021 which was decided on dated 07.07.2021 and the appeal was dismissed with modification stating that, they find no reason to deny the decree for specific performance to the D.H. by substituting the decree of monetary compensation and directed that instead of Rs. 40,000/-, the D.H. shall pay sum of Rs. One lac to the JD for the execution of sale deed.

23 Hence, it appears from the record that, the decree in RCS no. 138/1992 is attained finality till Hon'ble Apex Court. The only amount is enhanced by Hon'ble Apex Court. But after the judgment of Hon'ble Apex court on dated 07.07.2021, instantly present objection petition is filed. It is not disputed that the father and mother of J.D. is died and J.D. and objector are their legal heirs. It is also not disputed that the J.D. and objector are brother and sister. According to the objector she is having undivided share in land Gat no. 241 at village Chikhali since 1952 i.e. since death of her father.

24 According to objector, inspite of repeated demand, J.D. did not partition the ancestral land in Gat no. 241. But it is strange that she did not file any suit for partition against her real brother inspite of having long time. The only plea is taken by the objector that she could not have knowledge of agreement to sale, filing of RCS no 138/1992 and all the proceedings up to Hon'ble Supreme Court. She came with the case that when her son went to the Village Chikhali, then from the villagers, he came to know about the proceedings in court in July 2021.

25 Record shows that the J.D. i.e. the defendant in the RCS no. 138/1992 never contended that the suit land was or is ancestral or joint family property. There is no issue framed in that regard. The only plea is taken by the defendant i.e. J.D. that the plaintiff i.e. DH is the money lender and it is the money lending transaction. This plea is nullified by the court. Moreover, the plea of joint or ancestral property is never taken by defendant or JD in any appeal up to the Hon'ble Supreme Court. In this execution proceeding also it is not the plea of J.D.

26 Apart from this, record shows that, when the mother of objector (Girijabai) took objection vide exh. 16 in this proceeding, then she also remained silent regarding the share of this objector (Subhadra). Application below exh. 16 did not say that there is share of this objector (Subhadra) in the land in Gat no 241. On the contrary, the objector in exh. 16 i.e. Girijabai took plea that she is having $\frac{1}{2}$ share with J.D. in 2H 71 R. land in Gat no. 241 of village Chikhali.

27 This objector i.e. Subhadra only filed one copy of 7/12 extract dated 01.03.2022 showing herself as a joint owner of 2H. 71. R land in Gat no. 241 of village Chikhali. But there is no previous documents filed on record which shows that the Objector Subhadra has undivided share in Gat no. 241 of village Chikhali. The only old documents like two 7/12 extracts and Hakka-Nond Patrak of Survey no. 94/1, Sy. no. 92/2, Gat No. 241 and Gat No. 279 are filed on record along with objection below exh. 16. All those documents are for the year 1999, but it does not bear the name of this Objector

Subhadra.

28 Moreover, objector Subhadra herself admitted that she is not in actual physical possession of the 2H. 71R. land in Gat no. 241. According to her, the JD is in cultivation of it and he is using her share and took yield and not gave any income to her. But it is also strange that she did not file any suit against J.D. till today. The J.D. is also remained silent on this objection filed by his sister Subhadra. Hence, it prima facie appears that the J.D and Objector Subhadra are in collusion of each other barring the DH from getting the fruits of the decree.

29 The plea of non-joinder of necessary party is not taken in the original suit. Thus, in this stage it cannot be said that the decree passed in RCS no. 138/1992 is nullity. At the time of raising objection below exh 16, J.D. or Girijabai could say that they are having another sharer of suit property. But they did not come with clean hands. Hence, this fact is intentionally suppressed by J.D. and his mother. Now as soon as the judgment of Hon'ble Apex court is come out, then another objection is immediately filed by the sister of J.D. This is not a mere coincident. In spite of having undivided share in 2H. 71 R. land in Gat no. 241, since 1952, then why the objector keep mum for such a long period.

30 Moreover, 7/12 extract of Gat no. 279 also shows some land in the name of J.D. and his deceased mother. But present objector is silent on that point. This also reflect that the objector and JD are in collusion and not come with clean hand before court.

Hence, considering the facts and the circumstances of this case the citations relied by the Objector with their due respect is not helpful to her as the facts and circumstances of this case is different.

31 The provision of section 47 r/w Order XXI Rule 35 and Rule 97 to 111 of the CPC deals with the object of giving life to a decree which would become a paper decree if not put in actual execution by removing all the objections and obstructions. The objections which can be raised to the execution of a decree other than objection under section 47 of the CPC are provided under Order XXI Rule 97 and 101 of CPC. The court is entitled to find out whether the objection of a person in obtaining possession of immovable property is legal or not.

32 An objection under Order XXI Rule 97 can be maintained by a person who is not bound by a decree and who claims an independent right over the suit property. But where obstructing party does not have subsisting right or outstanding claim of right and the cause relied by him is not found valid then the objection is not maintainable. As per order XXI, Rule 97 of CPC the obstructionist can raised the contention that decree being nullity and liable to be executed. Despite of the fact that he cannot established his independent right to possession and the matter can be investigated under Order XXI, Rule 101 of CPC. But, considering this case the JD never raised any claim of joint property and ancestral property in original suit or appeal. Moreover, the objection below exh-16 is also silent regarding this objector Subhadra.

33 For the sake of discussion if we assumed that, the objector is having $\frac{1}{2}$ share in the 2 H. 71 R. land in Gat no. 241 and the property is joint undivided property even though the JD is also having $\frac{1}{2}$ share in it. The land more than 03 Acer i.e., 01 H. 35 R. will comprise the half share and the suit land is merely 02 Acre 01 guntas i.e., 81 R. only. In such circumstances, it cannot be prima facie held that, JD executed illegal agreement with DH. Moreover, after filing of this objection also there is talk between parties for settlement for a year. But it could not succeed due to huge demand of consideration for sale deed.

34 The Court shall on receipt of application under Order XXI, Rule 97 proceed to adjudicate upon the application in accordance with Rule 101. The Court will hold a full fledged inquiry and determine all questions including the question relating to right title or interest in the property arising between the parties to the proceeding or their representatives. In accordance with such determination the Court shall either allow the application of the decree holder or auction purchaser directing that the applicant be put into possession of the property or dismissed the application or pass such order as it deem fit.

35 Where the Court is satisfied that, the resistance or obstruction was occasioned with any just cause by the judgment debtor or by some other persons at his instigation or on his behalf or by any transferee, where such transfer was made during pendency of suit or execution proceeding, it shall order the applicant to be put in to possession of property and if the applicant is resisted or obstructed

even there after in obtaining possession the Court may at the instance of applicant order obstructer to be detained in Civil prison up to 30 days as per Rule 98 (2) or Section 74 of CPC.

36 Considering all above discussion and the stage of the case, particularly the demeanor of the JD and the Objector, it is clear that they did not come with clean hands. It is not clear when the objector mutated her name over the land in Gat no 241 of Village Chikhali. Since year 1952, there is no record found in the name of objector. The single 7/12 extract in the month of March 2022 is filed on record. The Documents filed on record in the year 1999 does not show the name of present objector. Hence, according to my view, this objection is filed only to harass the DH and to keep him away to enjoy the fruits of decree passed since more than two decades in his favour. Hence, I do not find any merit in the objection at this stage Hence, I pass following order.

ORDER

Application i.e., objection petition is hereby rejected with costs.

Date: 08.09.2022

(Yogesh D. Koinkar)
Civil Judge (J.D.), Risod

CERTIFICATE

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

Name of the Stenographer : Rohit D. Pandit (Stenographer L.G.)

Name of court : C.J.J.D.& JMFC;Risod

Date : 08.09.2022

Judgment/Order signed by the
Presiding Officer : 08.09.2022

Judgment/Order uploaded on : 08.09.2022