

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

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918 CIVIL REVISION APPLICATION NO. 5 OF 2006

JAINARAYAN MOHANLAL SHARMA

VERSUS

BHAGWANPRASAD JAGANNATH SHARMA AND ANR.

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Advocate for Petitioner : Mr. M. K. Deshpande

Advocate for Respondent No.2 : Mr. D R Bhadekar

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CORAM : S. V. GANGAPURWALA, J.

DATE : 29th September, 2015

PER COURT :

1. Mr. Deshpande, the learned counsel for the petitioner submits that the suit filed by the present petitioner under section 6 of the Specific Reliefs Act is decreed. The said decree has become final. The present petitioner has filed application Exh. 79 for issuance of possession warrant against the respondent. The Court rejected the said application. Aggrieved thereby, the present revision.

2. Learned counsel submits that the suit under section 6 of the Specific Reliefs Act was perfectly maintainable. Initially the suit was filed for injunction. During the pendency of the said suit, the petitioner was dispossessed. As such, the petitioner

had filed the suit bearing Special Civil Suit No.46 of 1998. The said suit is decreed. The decree was perfectly legal and valid. Learned counsel relies on the judgment of learned single judge of this Court in case of **Anwar Farmosh Khan Vs. Mahendrakumar Jugalkishore Gupta**, reported in **2004 (3) Mh.L.J. 315**. According to learned counsel, the respondents cannot be allowed to continue their illegal possession. The dismissal of second appeal would not have any effect on the decree being passed and sought to be executed.

3. Mr.Bhadekar, learned counsel for the respondents supports the judgment and submits that objection filed by the respondents under Order 21 Rule 97 of the Code of Civil Procedure is allowed by the appellate Court and confirmed by this Court in second appeal.

4. With the assistance of learned counsel, I have gone through the impugned order. The proposition as laid down in the case of **Anwar Pharamosh Khan**, referred supra, need not be debated. The same is settled proposition of law. The present respondents had filed objection under Order 21 Rule 97 of the Code of Civil Procedure. The said objection initially was

rejected by the Trial Court. The respondents filed an appeal before the District Court. The District Court allowed the appeal, *inter alia*, allowed the objection under Order 21 Rule 97 of the Code of Civil Procedure. Against the said judgment and decree, the original plaintiff filed Second Appeal No.330 of 2001 before this Court. The said second appeal is dismissed by this Court vide judgment and order dated 11.09.2002.

5. The judgment and order passed under Order 21 Rule 97 is a deemed decree. In view of the objection under Order 21 Rule 97 being allowed, naturally, the executing court could not have entertained the application for issuance of possession warrant. The rights between the parties are crystallized by the judgment of this Court in the second appeal bearing No. 330 of 2001.

6. In light of above, no error has been committed by the court in rejecting the application. The civil revision application is dismissed. No costs.

(S. V. GANGAPURWALA, J.)

JPC