

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Second Appeal No.586 of 2012
With
Civil Application No. 9880 of 2012**

Chandrakant Raghunath Dinkar. .. **Appellant.**

Versus

Sambhaji Dipaji Garje
And Another.

.. **Respondents.**

Shri. Rahul R. Karpe, Advocate, for appellant.

CORAM: T.V. NALAWADE, J.

DATE : 21st OCTOBER 2015

ORDER:

1) The appeal is filed against the order made on application given at Exhibit 39 in Regular Darkhast No.105/1997 which is pending in the Court of the Civil Judge, Junior Division, Pathardi and also against the judgment and order of Regular Civil Appeal No.129/2010 which was pending in the Court of the District Judge-1 Ahmednagar. The execution petition is filed by the plaintiff, decree holder of Regular Civil Suit No.184/1993. The suit was filed for relief of declaration and possession against the present appellant. The suit is decided in

favour of the respondent and the decision has become final. Application at Exhibit 39 was moved in the execution petition by the present appellant to oppose the execution of the decree. He contended that the said decree was given virtually *ex parte* against him. He contended that some portion of original land Survey Nos.1,2 3 belongs to the Government and Government had probably allotted the portion in possession of the father of the present appellant. It is contended that in the year 1987 when inspection was done, father of the present appellant was found in possession and after the death of his father, the appellant is in possession. It is contended that this property belongs to Government but some false record was created by one Daga by joining hands with revenue office and then he sold one plot to present respondent, plaintiff. It is contended that as the Government is the owner, decree holder cannot take possession of this property. Heard learned counsel for the appellant.

2) It is not in dispute that the decision given against the present appellant has become final and the aforesaid points could have been raised in the suit itself.

At present it needs to be presumed that all these points are decided against the present appellant. The decree was given long back, in the year 1997 and it can be said that by playing such tactics, the judgment debtor, appellant, is avoiding to hand over the possession.

3) For obstructing the execution of the decree it was necessary for the appellant to show that he has some other rights which are not considered and could not be considered in the suit by the trial Court. He has nothing with him to show that he is entitled to keep the possession. In view of these circumstances, this Court holds that nothing can be achieved by admitting the appeal. The matter does not fall under Order 21 Rule 97 of the Civil Procedure Code. The appellant was asking the executing court to virtually go beyond the decree which is not possible.

4) In the result, the appeal stands dismissed. Civil Application stands disposed of.

Sd/-
(T.V. NALAWADE, J.)

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