

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

CIVIL REVISION APPLICATION NO.1255 OF 2001

Ambadas s/o Bhimrao Jagtap,  
Deceased, through L.Rs.

1. Youraj Ambadas Jagtap,  
Age 30 years, Occ. Agri.,  
R/o Malkondji, Tq. Ausa,  
District Latur.
2. Girjabai w/o Ambadas Jagtap  
Age 65 years, Occ. Household,  
R/o as above. ... APPLICANTS  
(Orig L.Rs. of J.D.No.2/  
Defendant No.2)

VERSUS

1. Sushilabai w/o Limbraj Jagtap,  
age 30 years, Occ. Agri.,  
R/o Malkondji, Tq. Ausa,  
District Latur.
2. [ Limbraj s/o Ambadas Jagtap,  
Age 40 years, Occ. Agri.,  
R/o as above. ] ... RESPONDENTS  
  
**(No.2 deceased,  
abated)** (No.1 Orig. Decree holder,  
No.2 Orig. J.D.)

.....  
Shri M.L. Dharashive, Advocate for applicants  
Shri V.C. Solshe, Advocate for respondents  
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CORAM:    A.I.S. CHEEMA, J.

DATED:    29th January, 2015.

Date of reserving judgment : 20/1/2015

Date of pronouncing judgment : 29/1/2015

JUDGMENT :

1.            This revision application has been filed by legal representatives of J.D. No.2 Ambadas Jagtap, who was defendant No.2 in regular Civil Suit No.37/1995, which had been filed by respondent No.1 Sushilabai. The applicants filed objection to the attachment of Gat No.1/A of village Malkondji, Taluka Ausa, District Latur and the objection was rejected on 27.4.2001 in Regular Darkhast No.12/1998 by Civil Judge, Junior Division, Ausa. The applicants No.1 and 2 filed Misc. Application No.135/2001 before the District Judge, Latur. In the appeal, application for stay to the third bid in Regular Darkhast No.12/1998 was sought. Even this Misc. Application No.135/2001 was rejected by Additional District Judge, Latur on 6.11.2001.

Thus, this revision application was filed challenging not only the order passed by the Executing Court on 27.4.2001 but also the order passed by the district Judge in Misc. Application No.135/2001 on 6.11.2001.

2. A brief reference to the facts now needs to be made.

Respondent No.1 Sushilabai filed Regular Civil Suit No.37/1995 against respondent No.2 Limbraj (her husband) and Ambadas Bhimrao Jagtap (father-in-law) was arrayed as defendant No.2. The present applicants are legal representatives of the said Ambadas Bhimrao. Applicant No.1 is the son of Ambadas while applicant No.2 is the widow of Ambadas. The suit was filed for maintenance. The suit was decreed exparte as follows :

### **ORDER**

1. Suit is decreed with costs.
2. The defendants shall pay Rs.200/- (Rs. Two Hundred only) p.m. as maintenance amount to the plaintiff.
3. The charge of maintenance amount be kept on the land Sy.No.24/B area 4 acres, Gat No.77, area 12 R and Gat No.1/A area 4 H. 60 R., all lands situated at village Malkondji, Tq. Ausa, District Latur.
4. Decree be drawn up, accordingly."

3. Respondent No.1 Sushilabai then filed Regular Darkhast No.12/1998 (Exhibit B) for execution claiming that Rs.8149.95 ps. were to be recovered. She also claimed attachment and sale of the properties on which the charge was

kept for recovery of her maintenance. The execution was filed against respondent No.2 Limbraj (now deceased) as J.D. no.1 and the present applicants as legal representatives of J.D. No.2 Ambadas

4. The present applicants filed application dated 20.2.2001 before the Executing Court claiming that they were not party to the litigation and the property Gat No.1/A could not be attached. It was claimed that, there was oral partition in 1994 on the date of Gudi Padva and in the partition, the present applicants were allotted Gat No.1/A and Gat No.77. At that time, the owners of these lands were deceased Ambadas and applicant No.1 Youraj. The application claimed that, to the share of J.D. No.1 Ambadas, Gat No.24/B was allotted in the partition and he was owner and in possession of that land. The application claimed that, Gat No.24/B was of the share of J.D. No.1 Limbraj and the decree holder Girjabai could proceed against that land. Application mentions that, name of J.D. No.1- Limbraj had been entered for Gat No.1/A being legal representatives, but he is not the owner and in possession of the same. The application mentions that the present applicants Girjabai and Youraj did not know the law and the oral partition was not entered in the records. Thus, they objected to the attachment of Gat No.1/A and its sale.

5. The application raising objection was considered by the executing Court. Considering the objections raised, the executing Court found that if the records are considered, after the death of J.D. No.2 Ambadas, the names of the objection petitioners had been brought on record as legal representatives of J.D. No.2 Ambadas. It held that, the objection petitioners stepped into the shoes of Ambadas and the decree passed against Ambadas was binding on them also. For such reasons, the Civil Judge, Junior Division, AUSA held that it cannot go behind the decree and the objections are not tenable. The Court directed that the sale proclamation be issued for recovery of Rs.8149/-.

6. The applicants appear to have challenged the order dated 23.4.2001 in District Court and the Misc. Application for stay was filed. Even the Additional District Judge considered the objections raised by the applicants and found that charge has been created on the lands belonging to the family and there was no evidence available to show that partition had taken place. The Additional District Judge found that it would not be appropriate to stay the execution to deny respondent No.1 Sushilabai the fruits of the decree. Thus, the present revision application came to be filed.

7. The learned counsel for the applicant has been heard. Referring to the above facts, the learned counsel submitted that, when this revision was filed, the execution was stayed during the pendency of the revision. Otherwise, the sale was on the third bid. According to the learned counsel, there was oral partition and the husband of respondent No.1 had been allotted Survey No.24/B and so, the respondent No.1 Sushilabai could not have proceeded against Gat No.1/A, which, according to him, had come to the share of present applicants. It has been argued that, the objections raised by the applicants should have been allowed and Gat No.1/A should have been separated from the execution proceedings.

8. Learned counsel for respondent No.1 Sushilabai submitted that the decree passed in Regular Civil Suit No.37/1995 was not challenged by the Judgment Debtors, who were original defendants No.1 and 2. The decree has become final. The decree kept charge on Survey No.24/B, Gat No.77 and Gat No.1/A. According to the learned counsel, the decree holder has option to proceed against any of the properties. He submitted that, the objections raised by the applicants are on the face of it, untenable as their objection application itself shows that they claimed oral partition, and in para 6 of their objection application, accepted that as per the alleged oral partition, there

was no mutation entry. Thus, there was no material to support alleged partition. It has been submitted by the learned counsel that, records clearly showed the properties to be of the family and in the decree, charge was created and so, the decree holder is entitled to execute the decree. He submitted that, the applicants stepped into the shoes of deceased Judgment Debtor No.2 Ambadas and they are also liable under the decree. The learned counsel submitted that, during the pendency of this revision, he had filed Civil Application No.3965/2003 for withdrawal of the money deposited and with the application, he has filed copy of the sale deed dated 16.6.2000. He submitted that, the said document shows that, in spite of the decree passed, Judgment Debtor No.1 Limbraj transferred Survey No.24/B to one Shrimand Anant Barde. He submitted that, the present applicant No.1 Youraj signed that sale deed as consenting party. He submits that, if really partition had taken place in 1994, there would be no question of applicant No.1 Youraj signing the sale deed as consenting party. He submits that, the applicants are aware of such sale deed dated 16.6.2000 and were, therefore, mentioning in the objection application that the decree holder may proceed against Gat No.24/B.

9.           Going through the record, it is quite clear that the decree concerned, although exparte, has become final. The

record shows that the present applicants even in the objection application, showed themselves as legal representatives of Judgment Debtor No.2 Ambadas and raised objections. Although in the application dated 20.2.2001 in execution they claimed that there was oral partition in 1994, the application itself mentions that there was no mutation done in records. Subsequent conduct of applicant No.1 Youraj in joining the sale deed dated 16.6.2000 is also rightly criticised by the learned counsel for respondent No.1.

10. I do not find that there is any illegality or material illegality in the order of the executing Court that the present applicants have stepped into the shoes of deceased Ambadas and that the decree was binding on them. I do not find that there is any error even in the observations of the Additional District Judge, Latur as made in the order dated 6.11.2001 in Misc. Application No.135/2001.

11. There is no substance in the Revision Application. Civil Revision Application stands rejected with costs.

(A.I.S. CHEEMA, J.)