

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

Second Appeal No. 366 of 2012

Revansidhappa S/o Baslingappa Utage. .. **Appellant.**

Versus

Dwarkadas S/o Shriniwas Baheti
And Others.

.. **Respondents.**

Shri. P.V. Mandlik, Senior Advocate, instructed by Shri.
N.K. Tungar, Advocate, for applicant.

CORAM: T.V. NALAWADE, J.

DATE : 16th SEPTEMBER 2015

ORDER:

1) The appeal is filed to challenge the order made on Exhibit 76 in Regular Darkhast No.5 of 2001 presently pending in the Court of the 6th Joint Civil Judge, Junior Division Latur and also against the judgment and order of Regular Civil Appeal No.78/2011 which was pending in the District Court Latur. Heard learned Senior Counsel for the appellant.

2) Execution proceeding is filed by the respondents on the basis of compromise decree given in respect of landed property. In the execution proceeding

present appellant filed objection petition and requested to consider his objection under the provisions of Section 47 and Rules 97 and 101 of Order XXI of the Code of Civil Procedure. The decree holder and others contended that such application by present appellant was not tenable as he was not in possession of the property and he was not party to the suit in which decree was given.

3) The appellant wants to show that suit property was belonging to him and one employee of the appellant behind back of the appellant had given the suit property on lease basis to a partnership firm. There was dispute amongst partners of the said firm and the said suit was filed by the landlord for relief of possession, declaration etc. in respect of the same property. In the suit filed by the partnership firm one Court Receiver was appointed and the receiver had taken possession of the said property.

4) Both the Courts have considered the provisions of Section 47 and aforesaid Rules of Order XXI of the Civil Procedure Code. Learned Senior Counsel for the appellant mainly relied on Rule 97 which runs as under :-

"97. Resistance or obstruction to possession of immovable property.-- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

5) He has placed reliance on one case reported as **AIR 1998 SC 1827 (Shreenath v. Rajesh)**. Facts of each and every case are always different. Tenants were involved in the objection petition and they were in possession. In view of these circumstances the Apex Court made observation that the rights of the parties including the tenants with regard to possession need to be decided under the provisions of Order 21 Rules 99 to 103.

6) In the present matter admittedly the appellant is not in possession of the suit property nor he was party in the suit in which decree is given. His case is altogether different. As he was not party to the suit in which compromise decree is given, the said decree will not be

binding on him and so there was no necessity for him to appear in the matter and to take objection. He does not fall in the category of particular persons mentioned in Rule 97 of Order XXI of the CPC. In view of the aforesaid circumstances the Courts below held that the application filed by the present appellant was itself not tenable. Thus there was no question of giving decision regarding rights of the appellant in the execution proceeding and so the appeal in District Court is also dismissed. In view of these circumstances, this Court holds that no substantial question of law can be formulated. It is settled law that in such case party like present appellant can agitate the matter by way of separate suit and his rights cannot be decided under the aforesaid provisions.

7) In the result, the appeal stands dismissed.

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

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