

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.497 OF 2014

*(Mrs. Kusum Chandramohan Minocha and another Vs. Jaylaxmi Subbarao Ransube
since deceased Vishvnath Nana Nazare and others)*

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.

Court's or Judge's orders.

*Shri A.B. Tajane, Advocate for Appellants.
Shri Vishal V. Nazare Respondent in person.*

CORAM: R.K. DESHPANDE, J.

DATE: 28th JULY, 2015.

In Regular Darkhast No.225 of 2004 an objection was raised by the judgment debtors to the executability of the decree passed in a counter claim, which has been confirmed in a challenge upto the Second Appeal before this Court. It is urged that the counter claim filed by the decree holder was barred by the law of limitation. The Executing Court has considered this aspect of the matter in paragraph No.12 of its judgment passed on 03.04.2014 in Regular Darkhast No.225 of 2004 in para 12 is reproduced below:

“12. Thus, having gone through the decisions in Silverline's case, it is clear that it is not mandatory to frame issues and permit the parties to lead the evidence in respect of an objection petition under Order 21 Rule 97. The court can adjudicate the petition on admitted facts or even on the averments made by the resistor. Whether

to frame the issues and to permit the parties to lead evidence is the question of facts.”

The trial Court has correctly understood the principles of law which has been confirmed by the Lower Appellate Court. It does not give rise to any substantial question of law. The second appeal is dismissed.

The learned counsel for the appellant, at this stage submits that the decree holders have obtained possession of a land in excess of what has been decreed by the trial Court and confirmed upto Appellate Court in second appeal. If this is the position it is open for the appellant to file appropriate proceeding and seek restoration of such portion after establishing the claim in the court of competent jurisdiction.

JUDGE