

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, AT NAGPUR.**

**WRIT PETITION NO.3619 OF 2015**

(Rajesh Laxmanprasad Sahu ..vs.. Dilipkumar Babulal Sahu)

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

**CORAM : Z.A. HAQ, J.**

**DATED : 30-06-2015**

Heard Shri P.S. Patil, learned Advocate for the petitioner.

2. The petitioner has filed an objection under Order XXI Rule 97 of the Code of Civil Procedure, contending that the decree passed in Special Civil Suit No.31/2000 and maintained in appeal is not binding on the petitioner. According to the petitioner, the properties which were the subject matter of Special Civil Suit No.31/2000 belonged to HUF of which the petitioner is a coparcener. The case of the petitioner is that he was not impleaded as party to the Special Civil Suit No.31/2000 and therefore, the decree passed in that civil suit is not binding on him. It is the case of the petitioner that he is in possession of 400 sq.ft. area where he is running his flour mill and the respondent/decreed-holder has no right to execute the decree for possession in respect of the area in possession of the petitioner. The petitioner has prayed that the respondent be restrained from executing the decree in respect of the above referred area which

according to him is in his possession.

3. During the pendency of the adjudication of the objection filed by the petitioner under Order XXI Rule 97 of the Code of Civil Procedure, the petitioner has filed an application (Exhibit 37) seeking permission to lead evidence to substantiate his contentions before the executing Court. By the impugned order, the executing Court has rejected the application (Exhibit 37) filed by the petitioner. The petitioner being aggrieved in the matter, has filed this writ petition.

4. Shri P.S. Patil, the learned Advocate for the petitioner has submitted that the petitioner cannot protect his possession by filing the separate suit and the contentions of the petitioner are required to be adjudicated by the executing Court while deciding the objection filed by the petitioner under Order XXI Rule 97 of the Code of Civil Procedure. It is submitted that the trial Court has to decide the objection filed by the petitioner, like the civil suit and therefore, it is necessary that the petitioner be granted opportunity to lead evidence to substantiate his contentions. The learned Advocate has submitted that the executing Court has failed to exercise the jurisdiction vested in it, by rejecting the application (Exhibit 37) and refusing permission to the petitioner to lead evidence. The learned Advocate has relied on the judgment given by the Hon'ble Supreme

Court in the case of *Ashan Devi and another Vs. Phulwasi Devi and others with Phulwasi Devi vs. Ashan Devi and others* reported in (2003) 12 SCC 219.

5. It cannot be disputed that the objection raised by the petitioner under Order XXI Rule 97 of the Code of Civil Procedure is required to be decided after granting appropriate opportunity to the petitioner to substantiate his contentions. However, in the present case, the learned trial Judge, after considering all the relevant aspects has recorded that the petitioner is not required to be given the opportunity of leading evidence. The learned trial Judge has recorded in paragraph 8 of the impugned order that the judgment and decree passed in Special Civil Suit No.31/2000 and in Regular Civil Appeal No.41/2010 has been confirmed by this Court in Second Appeal No.457/2013. It is further recorded that the submissions made on behalf of the petitioner (objector) can be considered on the basis of the record available before the Court. The conclusions of the learned trial Judge are based on the averments made by the petitioner in objection filed under Order XXI Rule 97 of the Code of Civil Procedure which shows that the petitioner is conducting his business in part of the suit property. The learned Advocate for the petitioner has not been able to point out the necessity for the part of the petitioner to lead evidence. Though the executing Court has recorded that the objection taken by the

petitioner can be decided on the basis of the material available on the record, the petitioner has not shown in the petition that the necessary material is not available on the record and for that the petitioner is required to lead evidence. In my view, the impugned order is proper and does not require any interference.

6. The writ petition is dismissed. In the circumstances, the parties to bear their own costs.

**JUDGE**

*pma*