

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

**12 SECOND APPEAL NO. 387 OF 2016
WITH
CA/8432/2016
IN
SA/387/2016**

MANNUKUMAR MAGANLAL JHAWAR

VERSUS

KANAKMAL MAGANLAL GANDHI AND ORS

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Mr. S.D.Kulkarni h/f Mr. Sanket S.Kulkarni,
Advocate for Appellant.

Mr. R.R.Mantri, Advocate for R – 1.

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CORAM : T.V.NALAWADE, J.

DATE : 13th JUNE, 2016

ORDER :-

. The Appeal is filed against the Order made on Exhs. 1,34,36 and 62 filed by third parties in Regular Darkhast No. 77/2015 which is pending in the Court of the 7th Jt. Civil Judge [Jr.Division], Ahmednagar. Present appellant, the objection petitioner in execution proceeding, had filed application for deciding his rights in the property involved in the litigation and his applications are rejected by

the executing Court. Heard both sides.

2. Present appellant is successor of one Motilal Jhawar. Motilal was running business in the suit premises in the name and style as 'M/s M.R.Bhingarwala'. He died in the year 1985 leaving behind 4 sons and 2 female heirs. One son died in the year 1991.

3. It is the case of the appellant that the suit property was taken on rent basis by Motilal for the firm from the original landlord – Ahmednagar Emarat Company. It is contended that the decree holder Kamalnath Gandhi had purchased the property from the original owner in the year 1979 and there was no information to the firm of Motilal about this transaction. It is the case of the appellant that R.C.S. No. 302/2002 was filed for possession and in that Suit present appellant was not made party. According to the appellant, after the death of Motilal, as a successor of Motilal, he got tenancy rights though the tenancy was in the name of firm.

4. The decree holder filed reply and contended that present appellant has no right to oppose the execution and the rights of the original tenant are already decided. The record of R.C.S. No. 532/1997 was filed before the executing Court to show that partition was effected amongst the successors of Motilal and in view of the partition, the father of the present appellant namely Maganlal had shifted to Mumbai and father of appellant was not doing business with Motilal at any time. As against this circumstance, in the Suit

for possession, persons who were named in the licence were made parties and the point raised that other successors of Motilal are necessary parties, was considered in the said Suit and was decided against the defendants. This decision was confirmed up to the Apex Court.

5. The learned counsel for the present appellant submitted that the Suit ought to have been filed against the firm for possession and as the Suit was not filed against the firm, the decision is not binding on the firm. Learned counsel submitted that present appellant is the partner of the said firm. Learned counsel was asked to produce something on record to show that the property was given to the firm as tenant and present appellant was partner of the said firm. Copy of the registration of the firm was produced to show that in the year 1967 'M/s M.R.Bhingarwala' firm was registered. This document does not show that even father of the present appellant was partner of that firm. It was partnership at will and admittedly many persons including Motilal are dead. Further the point of tenability of the Suit for want of necessary party is already decided.

6. The learned counsel for the appellant submitted that specific points ought to have been formulated and they ought to have been decided in view of the provisions of Order XXI Rule 97 of the Code of Civil Procedure and as that procedure was not followed, order made by the executing Court can not sustain in law. Learned counsel placed reliance on the case reported in **AIR 2002 Supreme Court – 3083**. **[Tanzeem-e-Suifia Vs. Bibi Haliman and Ors.]**. The Apex

Court has laid down that in such proceeding the objectors needs to be heard. The said proceeding was filed in the reported case by the decree holder. In the present matter, the objection petition was filed by the present appellant and the record shows that sufficient opportunity was given to him to establish his rights. It can be said that in view of the nature of the contentions and the objections mentioned above, there was no other alternative than to reject the objection petition. All the partners of the aforesaid firm were made defendants and the Suit is decided against them. This circumstance shows that only to protract the execution of the decree, the objection was filed. It can be said that the objection petitioner succeeded in protracting the execution of the decree by taking such step. Thus, no substantial question of law as such is involved in the matter.

7. In the result, Second Appeal stands dismissed. In view of dismissal of Second Appeal, Civil Application No. 8432 of 2016 does not survive and stands disposed of.

8. The learned counsel for the appellant prayed for some time to challenge the Order made by this Court. Such relief is refused in view of peculiar facts and circumstances of the case.

[T.V.NALAWADE, J.]