

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.54 OF 2016**

1. Smt. Kesharben Kanjibhai and ..Applicants
Anr.

Vs

1. Sm.t Vijayaben Devabhai and .. Respondents
Ors.

Mr.C.M.Kothari, Advocate for Applicants.

**CORAM : R.G.KETKAR,J.
DATE : 02/02/2016**

PC:

1. Heard Mr.C.M.Kothari, learned counsel for the applicants at length.
2. By this Application under section 115 of C.P.C, the applicants have challenged the judgment and order dated 19.2.2015 passed by the learned Civil Judge, Sr.Dn., Daman below Exh.1 in S.E.A. No.11 of 2008. By that order, the learned District Judge rejected the objections vide Exhibits 20 and 44 on the ground that they are not within the scope of Section 47 of C.P.C.
3. Mr. Kothari submitted that the respondents had instituted Spl.Civil Suit No.90 of 2003 against the applicants, herein after referred to as 'judgment debtors', for declaration, possession, damages and mesne profits. In paragraph 1 of the plaint, the

plaintiffs contended that one Shri Deva Ganda, since deceased, was absolute owner of survey no.204/10 admeasuring 2100 sq.meters, situate at village Devka, Nani Daman (for short 'suit property') The plaintiffs, inter alia, prayed for declaration that they are lawful owners and occupants of the suit property; directing the defendants to vacate and hand over vacant and peaceful possession of the suit property to the plaintiff; directing the defendants to remove the construction of the compound wall and godown from the suit property, among other prayers. The suit was decreed on 24.4.2008. The learned trial Judge declared that the plaintiffs are exclusive owners of land survey no.204/10, admeasuring 2100 sq.meters since from the lifetime of late Deva Ganda.

4. Mr. Kothari submitted that the plaintiffs filed Darkhast, being Special Execution Application no.11 of 2008 for execution of the decree. In item no. 7 the plaintiffs described the property as under:

(7) Amount with interest The main relief granted in the suit due upon the decree or is that the plaintiffs are declared other relief granted exclusive owners of the land thereby together with bearing Survey no.204/10, particulars of any cross admeasuring 2100 sq.meters of decree. village Marwad, Nani Daman.

In short, Mr. Kothari submitted that the subject matter of the suit was survey no.204/10, admesuring 2100 sq.meters of village **Devka Nani Daman**. As against this, in Darkhast the plaintiffs intended to execute decree in respect of survey no.204/10 admeasuring 2100 sq. meters of village **Marwad, Nani Daman**. Village Devka and village Marwad are different villages. He fairly stated that said contention was, however,not raised before the executing court. Upon taking instructions from petitioner no.2 who is present in the court as also instructing Advocate, Mr Kothari seeks permission to withdraw Civil Revision Application with liberty to take out appropriate proceedings before the executing court raising this contention, among other contentions. He submitted that the judgment debtors may be permitted to lead oral evidence in support of their contentions.

5. In view thereof, on the motion made by Mr Kothari, judgment debtors are allowed to withdraw the Application under section 47 with liberty as prayed for. All contentions of the parties are expressly kept open. If such application is taken, the learned trial Judge will decide the same in accordance with law. Order accordingly.

(R.G.KETKAR, J.)