

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11875 OF 2015

Rajendra Rangnath Chonkar

.. Petitioner

Versus

Mr. Deepak Nathuram Dandekar and others

.. Respondents

Mr. D. S. Pagare, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 6th JANUARY 2016

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 20.10.2015 passed by the Learned 3rd Joint Civil Judge, Junior Division, Panvel, by which order the application Exh.44 filed by the Petitioner for framing of issue and an opportunity to give evidence came to be rejected. The Petitioner is an obstructionist and who has filed an application under Order 21 Rule 97 of the Civil Procedure Code. The Petitioner is the son of the original Defendant Rangnath Chonkar. The suit for eviction as originally filed was against the father of the Petitioner i.e. the said Ranghnath Chonkar. It appears that during the pendency of the suit the said Ranghnath Chonkar died and in view thereof his heirs were brought on record i.e. his wife and his children except the Petitioner. The suit came to be decreed in favour of the landlords and the decree after its

confirmation by the Appellate Court and this Court was also confirmed by the Apex Court. The Petitioner put up his obstruction on the ground that he was not made a party to the suit as a heir of the original Defendant. The application was filed under Order 21 Rule 97 objecting to the execution of the decree on the ground that he is not bound by the decree as he was not made a party to the proceedings as the heir of the original Defendant. In the said application the Petitioner filed the instant application Exh.44 for framing of issue and for an opportunity being given to lead evidence. The Executing Court has rejected the said application on the ground that the Petitioner would first have to demonstrate his independent right and thereafter only the issue can be framed and he can be allowed to lead evidence. In my view, having regard to the fact that the Petitioner is claiming through the original Defendant who was his father, the order passed by the Trial Court directing the Petitioner to first prove his independent right cannot be found fault with. No case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

2. Needless to state that the application filed by the Petitioner under Order 21 Rule 97 would be decided by the Executing Court on its own merits and in accordance with law.

[R.M. SAVANT, J]