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

WRIT PETITION NO.3360 OF 2018

Firoz Shakeel Pathan	...	Petitioner
V/s.		
Bagwan Makka Masjid		
Trust and ors	...	Respondents

Mr. Ashok B. Tajane, for the Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 16th MARCH, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner.
- 2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 18.12.2017, passed by Jt. Civil Judge, Junior Division, Barshi, below the Application Exh.44 in Regular Darkhast No.45 of 2011.
- 3] This application at Exh.44 was filed by the present petitioner, under Order 21 Rule 97 of Code of Civil Procedure, on the ground that he is in possession of the suit property and therefore, enquiry may be conducted before allowing the execution proceeding to continue.
- 4] The grievance of the petitioner is that the the Executing

Court has rejected said application, without making any enquiry under Order 21 Rule 97 of C.P.C., hence the impugned order passed by the executing Court needs to be set aside.

5] However, the perusal of the impugned order passed by the executing Court, clearly goes to show that the the Executing Court has prima facie considered the said application and in that respect made enquiry as to whether the petitioner is having any documentary evidence to show that he is in possession of the suit property and found that the petitioner has not produced a single document to show his prima facie possession over the suit property.

6] Even in this writ petition also, though the petitioner is relying upon the the copy of the ration card, the ration card does not bear the suit property number to show that the petitioner is in possession of the suit property.

7] The Executing Court has also considered the fact that R.C.S. No.392 of 1991, was decreed against the maternal grand-father of the present petitioner. It was decreed on 17.7.2003. Regular Civil Appeal No.265 of 2017 was preferred. The Appeal was dismissed by the Additional District Solapur on 17.8.2010. The maternal grand-father of the petitioner, has preferred Second Appeal before this Court against the said judgment and decree. During the pendency of the Second Appeal, maternal grand father of present petitioner died and

his widow was brought on record. They had prosecuted the Second Appeal in this Court.

8] In this application, though the maternal grand-father of the present petitioner and his family members claim to be in possession of the property, but at no point of time during all these years from 1991 onwards till 2017, the petitioner ever claimed to be in possession of the suit property or sought his impleadment in the said proceeding. Even after dismissal of the Second Appeal on 1st March, 2013, the petitioner's mother kept quiet and now when the possession warrant is about to be executed, petitioner is raising objection, on the ground that he is in possession of the suit property, but without showing a single document to that effect. In such circumstances the Executing Court was justified in rejecting the said application.

9] Hence writ petition holds no merit, therefore, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]