

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

**APPEAL FROM ORDER NO.46 OF 2019
WITH
APPLICATION NO.10731 OF 2019**

Subhash Hemlal Sangore,
Age : 69 years, Occ. Pensioner,
r/o. 252, Shivaji Nagar, Jalgaon ..Petitioner

Vs.

Vilas Ramesh Sangore,
Age : 45 years, Occ. Business,
and others ..Respondents

Mr. Parag Barde, Advocate for appellant

**CORAM : R.G. AVACHAT, J.
DATE : SEPTEMBER 13, 2019**

PER COURT :-

Heard Mr.Parag Barde, learned Counsel for the
appellant.

2. The challenge in this appeal is to the
judgment and order dated 09.07.2019 passed by learned
Ad-hoc District Judge-1, Jalgaon, in Regular Civil
Appeal No.43 of 2019, whereby the order dated

07.03.2019 below application (Exh.33) in Regular Darkhast No.322 of 2016 passed by learned Joint Civil Judge, Junior Division, Jalgaon, has been set aside, sending the matter back to the executing Court for recording of evidence.

3. The appellant filed a suit, being Regular Civil Suit No.224 of 2013, against Jalgaon District Central Co-operative Bank Ltd. ("J.D.C.C. Bank", for short) for possession of properties and mesne profit. The properties in the said suit were two blocks given to J.D.C.C. Bank on rent. The suit came to be decreed on 12.04.2016, directing J.D.C.C. Bank through its Manager to hand over vacant possession of the suit blocks to the plaintiff (appellant herein).

4. The appellant/plaintiff initiated proceedings for execution of the decree passed in Regular Civil Suit No.224 OF 2013. Respondent nos.1 and 2 herein *suo motu* appeared in the execution proceedings and resisted for issue of warrant of

possession. The executing Court turned down the claim of respondent nos.1 and 2 herein. These respondents, therefore, preferred appeal being, Regular Civil Appeal No.43 of 2019. The said appeal came to be allowed on 09.07.2019 in terms of the following order:-

"(1) Reg. Civil Appeal No.43 of 2019 is hereby allowed.

(2) The order passed by learned 5th Jt. Civil Judge, Junior Division, Jalgaon in R.D. No.322/16 below Exh.33 on 7.3.2019 is hereby set aside.

(3) The learned Trial Court i.e. Executing Court of R.D. No.322/16 is directed after giving full opportunity to both the parties for adducing their oral and documentary evidence, pass appropriate order according to law.

(4) Parties to proceeding appear before Executing Court on the date which fixed by learned Trial Court for adducing their oral and documentary evidence.

(5) Parties to proceeding bear their own costs.

(6) Decree be drawn up accordingly.

(7) Copy of this judgment be sent to the learned Trial Court for necessary action and information."

5. Mr.Barde, learned Counsel for the appellant, would submit that respondent nos.1 and 2 were not parties to the suit (224 of 2013) in which the decree has been passed. These respondents, therefore, cannot have a right to prefer an application under Section 47 of the Code of Civil Procedure ("C.P.C.", for short), since said Section postulates that the dispute relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. According to learned Counsel for the appellant, respondent nos.1 and 2 had no locus to *suo-motu* appear in the execution proceedings. According to learned Counsel, the provisions of Order I Rule 10 and Order VI Rule 17 of C.P.C. Have no application to

the execution proceedings. In support of his submissions, learned Counsel has relied on the judgment of learned single Judge of this Court in **Writ Petition No.8903 of 2014 (Bhaurao Chavan Sahakari Sakhar Karkhana Ltd. Vs. Maruti Electricals and ors.)** and other petitions dated 21.03.2015. He would further submit that unless and until the person, who is agitating the execution, has independent right, title or interest in immovable property, he cannot claim adjudication of his rights by resorting to Order XXI Rule 97 of the C.P.C. Reliance has been placed on the judgment of this Court in **Shivaji s/o. Bhausahab Bankar Vs. Jijabai Prabhakar Alwane and ors., 2016(4)Mh.L.J. 939**, in support of said contentions. Reliance has also been placed on the judgment of the Apex Court in the case of **Kazi Akeel Ahmed Vs. Ibrahim, 1996 DGLS (SC) 781**.

6. I have carefully perused the judgment and order passed in the appeal (R.C.A. No.43 of 2019).

Also considered the submissions advanced by learned Counsel for the appellant. Perused the citations relied upon by him.

7. The Facts indicate that Hemlal was a common ancestor. The appellant herein is the son of Hemlal. Hemlal had one more son namely, Ramesh. Ramesh is no more. Respondent nos.1 and 2 are sons of late Ramesh. The appellant herein filed R.C.S. (224 of 2013) against J.D.C.C. Bank (respondent no.3). The said suit was filed for possession of two blocks given to J.D.C.C. Bank on rent. In the suit, the appellant contended that the suit blocks were given to J.D.C.C. Bank way back in 1975 by deceased Hemlal. The appellant/plaintiff claimed title to those two blocks given on rent to J.D.C.C. Bank, by virtue of a will executed by deceased Hemlal on 01.08.2002.

8. The pleadings in the suit would, undoubtedly, indicate that J.D.C.C. Bank had come with a case that it decided to vacate the suit blocks

and therefore, issued letters to the appellant/plaintiff herein and respondent nos.1 and 2 (the legal heirs of deceased Ramesh) on 18.09.2012, informing them about vacating the suit blocks. It was also the case of J.D.C.C. Bank that on 27.11.2012, it had issued letters to the appellant/plaintiff herein and respondent nos.1 and 2, asking them to come and take possession of the suit blocks. The appellant/plaintiff did not accept the letter. The appellant/plaintiff remained absent on 01.12.2012 and therefore, the J.D.C.C. handed over possession of those two blocks to respondent nos.1 and 2 (heirs of deceased Ramesh). In the suit, evidence was also tendered indicating delivery of possession of the suit blocks to respondent nos.1 and 2 herein. Still, the suit came to be decreed in favour of the appellant/plaintiff.

I do not propose to make any further comments as regards the decree passed in the said

suit, directing J.D.C.C. to hand over possession of the suit blocks to the appellant/plaintiff.

9. The appellant/plaintiff put the said decree to execution. In the execution proceedings, respondent nos.1 and 2 *suo motu* appeared and resisted delivery of possession. There is no substance in the contention of learned Counsel for the appellant/plaintiff that under Rule 97 of Order XXI of C.P.C., resistance/obstruction must be raised at the time of obtaining possession of the properties.

10. The legal position is very much clear. A person in possession of any immovable property on the basis of his own right, can *suo motu* appear in execution proceedings and raise objection as to issue of possession warrant.

11. The facts stated herein above would, undoubtedly, indicate that J.D.C.C. put respondent nos.1 and 2 in possession of the suit blocks in their capacity as legal heirs of the original landlord.

Whether the appellant/plaintiff became owner of the suit blocks by virtue of a will executed by late Hemlal, has to be decided in a suit or any other appropriate proceedings. Respondent nos.1 and 2 were not parties to the suit, in which the impugned judgment was passed. When the appellant/plaintiff claims title to the suit blocks on the strength of a will, respondent nos.1 and 2, who have been disinherited, ought to have been made parties to the suit, more so, when J.D.C.C. had come with a case to have handed over possession of the suit blocks to respondent nos.1 and 2.

When respondent nos.1 and 2 *suo motu* appeared in the execution proceedings, claiming possession over the suit blocks and title by virtue of succession to deceased Hemlal, they could not be said to have made claim through the judgment debtor, J.D.C.C. Sub-rule (2) of Rule 97 of Order XXI of C.P.C. mandates the Court to proceed to adjudicate

upon the application in accordance with the provisions contained herein above. The executing Court had rejected the application (Exh.33) filed by respondent nos.1 and 2 to allow them to lead evidence. In the aforesaid factual back-drop, the appeal preferred by respondent nos.1 and 2 has rightly been allowed, directing the executing Court to give an opportunity to the parties to the proceedings to lead evidence in support of their rival claims.

There cannot be dispute over legal submissions made by learned Counsel for the appellant on the strength of the authorities relied upon (referred herein above).

One has to see substance in the application or pleadings in respect of title to the property. Respondent nos.1 and 2 were justified in making *suo motu* appearance in the execution proceedings and resisting the execution.

12. For the reasons given herein above, I do not find any merit in the Appeal from Order. The same deserves to be dismissed and accordingly, dismissed.

13. In view of disposal of the appeal, Civil Application does not survive and stands disposed of.

[R.G. AVACHAT, J.]

kbp