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

29 SECOND APPEAL NO.14 OF 2019

Chandan Vilas Koli and Another .. Appellants

Versus

Kadu Lahanu Koli (Dead)
Bhavlal Kadu Koli and Others .. Respondents

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Advocate for Appellants : Mr. Sushant V. Dixit
Advocate for Respondent Nos.1, 3 and 4 : Mr. A.P. Basarkar h/f.
Mrs. Chaitali Chaudhari – Kutti

...

WITH

CIVIL APPLICATION NO.864 OF 2019

IN

SECOND APPEAL NO.14 OF 2019

....

CORAM : MANGESH S. PATIL, J.

DATE : 07-03-2022

PER COURT :

. This is a Second Appeal by the original obstructionists whose objection petition under Order-XXI, Rule-99 of the Code of Civil Procedure was dismissed by the executing court and which order has been confirmed by the appellate court by the judgment and order under challenge.

2. I have heard the learned advocates of both the sides on the point of admission.

3. Most of the relevant facts are not in dispute. The predecessor of respondent nos.1 to 4 - Kadu was the original plaintiff – Decree Holder whereas the father of the appellants was the defendant - Judgment Debtor. The suit property was a 'Koli Inam Land', which was resumed by the government after the Maharashtra Inferior Village Watans Abolition Act, 1959 (hereinafter 'Inam Abolition Act') came into force, but was regranted to him (Kadu). Predecessor of respondent nos.1 to 4 - Kadu filed a suit for declaration and possession based on the title. The judgment debtor i.e. respondent no.5 contested the suit. It was decreed and the decree reached finality. When Kadu put the decree to execution, the appellants raised the objection.

4. The appellants contend that they were the sons of respondent no.5. The land was in fact regranted to their grand-father Baliram Supdu Koli. It was standing in his name since the year 1973-74 by virtue of Mutation Entry No.5787. Baliram during his life time caused Mutation Entry No.7022 to be effected whereby the name of Vilas - Respondent No.5 was mutated to the suit property and since then he was in possession as the owner. Thus, the appellants claim to be in possession of the suit property. They contend that they became aware about the execution when the bailiff

tried to execute a possession warrant.

5. By way of supplementary objection the appellants further contend that no amendment was carried out in the execution petition after demise of Kadu to incorporate the names of respondent nos.1 to 4 without which the decree could not be executed. They also contend that unless they produced succession certificate to prosecute the execution, they were not entitled to do so.

6. The decree holders i.e. respondent nos.1 to 4 opposed the obstructionists petition. They denied all the averments and contended that it was another attempt to protract the execution.

7. After hearing both the sides, the executing court dismissed the obstructionists proceeding and the order has been confirmed by the lower appellate court.

8. Learned advocate Mr. Dixit for the appellants would submit that admittedly, the suit properly was originally the Koli Inam Land. After passing of the Inam Abolition Act, the government had resumed it and thereafter regranted it. Though the land was initially regranted to Kadu, by submitting application he caused a mutation

entry to be certified thereby transferring it in the name of Baliram and the appellants being the grand children of Baliram are entitled to inherit it.

9. He would further submit that since it was a Koli Inam Land governed by Inam Abolition Act, assuming for the sake of arguments that the appellants are the unauthorised holders as defined therein, by virtue of Section 9 of that Act read with Section 3, the civil court had no jurisdiction to grant a decree for possession which was in the nature of an eviction decree, the power of which vests in the Collector. He would submit that since it is a question going to the root of the jurisdiction of the civil court, the trial court as also the appellate court had erred in passing the decree for possession. Even the executing court and the lower appellate court failed to take into consideration this position in law, which clearly demonstrates that the decree was passed without jurisdiction. He would further submit that even without there being any pleadings such an issue being a pure question of law can be agitated even in the Second Appeal.

10. Mr. Basarkar h/f. Mrs. Chaudhari – Kutti, learned advocate for respondent nos.1, 3 and 4 submits that this is yet

another attempt on the part of the original judgment debtor - respondent no.5 to protract the litigation through the appellants, who are his sons. No independent right was demonstrated by the appellants before the lower courts. If they are claiming the right through respondent no.5 - judgment debtor, the decree would be binding on them as well. At no point of time any issue was raised by respondent no.5 – Vilas before passing the decree or even thereafter regarding its executability. A lame attempt is being made at his behest to somehow obstruct the execution.

11. I have carefully considered the rival submissions. Admittedly, the decree has reached finality and the appellants claiming to be the third persons are obstructing the execution under Order-XXI, Rule-99 of the C.P.C. Bearing in mind the fact that the appellants are none other than the sons of respondent no.5 – Judgment Debtor, it was imperative on their part to come out with a concrete pleading to demonstrate their independent right in the suit property. It is trite that though it is called an obstructionist proceeding under Order-XXI, Rule-99 of the C.P.C., the subsequent provisions clearly demonstrate that such an obstruction petition is to be decided as a suit and even a remedy of appeal is available thereunder. If such is the mandate of the law, it was imperative on

the part of the appellants to have come out with clear pleadings as to how and under which independent right they are intending to obstruct the execution. They simply aver that original plaintiff - Kadu had permitted the suit property to be mutated in the name of Baliram and they being the grand sons of Baliram, are putting forth the claim. No other source is being demonstrated as to how independent of Baliram and independent of their father Vilas they could lay any claim to the suit property. Once having admitted the fact that Kadu was the person who was the holder to whom, after abolition of inam the suit property was regranted, in the absence of any subsequent transfer as is permissible in law, merely by way of, may be voluntarily getting the suit property mutated in some others name Kadu could be said to have extinguished his title to the suit property. It was expected of the appellants to have come out with a pleading even in this respect if they wanted to demonstrate that Kadu's right to the suit property was extinguished by any recognized mode of transfer.

12. Faced with the situation learned advocate Mr. Dixit submits that Section 5 of the Inam Abolition Act comprehends the situation where there could be a subsequent transfer even without the permission of the Collector. One cannot dispute the provisions of the law. However, simultaneously, it was expected of the appellants

to have come out with such a pleading as would make out a case for them under Section 5 of the Act. It is nowhere pleaded in the objection petition that while effecting the mutation Kadu had intended to transfer it in the manner as is contemplated by law.

13. Conspicuously, what could be the manner in which such a transfer is to be made has nowhere been spelt out in the Inam Abolition Act itself. But, if one carefully reads the provisions of Sub-section 3 of Section 5 one can interpret such a 'transfer' *ejusdem generis* to the words used therein namely sale-deed, gift-deed etc. by way of a registered instrument. If such is the position of law, when the law in respect of the transfer contemplated under Section 5 of the Inam Abolition Act expects the transfer to be by a registered instrument and obviously by a recognized mode of transfer as is recognized in any law, in the absence of any claim being put forth by the appellants to substantiate their contention of Kadu having transferred the suit property to their grandfather Baliram, the objection raised by them does not hold water.

14. Once having reached a conclusion that the appellants have even failed to demonstrate having any right, title or interest in the suit property, independent of their father Vilas who is the

Judgment Debtor and grand-father Baliram, no objection at their instance can be entertained and has been rightly rejected by the courts below.

15. True it is that in a given case the question as to the jurisdiction which is a pure question of law which goes to the root of the jurisdiction can certainly be raised at any point of time. However, in the matter in the hand apart from the fact that neither Vilas - Respondent no.5 / Judgment Debtor or the appellants raised any such issue either in the suit or in the execution proceeding coupled with the fact that there is no material to demonstrate that the appellants are the unauthorized occupants or any issue as is contemplated under Section 3 of the Inam Abolition Act having been raised, the question of jurisdiction in fact does not arise.

16. No substantial question of law arises in the Second Appeal and it is dismissed with costs.

17. In view of disposal of the Second Appeal, nothing survives for consideration in the pending Civil Application No.864 of 2019 and the same stands disposed of.

(MANGESH S. PATIL)
JUDGE