

VRJ

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

WRIT PETITION NO.1733 OF 2023

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Dashrath Shankar Mohite

... Petitioner

V/s.

Satwashila Dattatray Pawar & Ors.

... Respondents

Mr. Abhijit P. Kulkarni with Mr. Krushna Jaybhay for the
petitioner.

Mr. Milind Deshmukh for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 2, 2023

P.C.:

1. The petitioner who is original defendant No.2 in Regular Civil Suit No.26 of 1998 is challenging order dated 23rd December 2022 passed by the executing Court rejecting petitioner's application purportedly under Order 21 Rule 97 of the Civil Procedure Code, 1908.

2. It appears that the respondents filed Regular Civil Suit No.26 of 1998 against three defendants. By judgment and decree dated 30th July 2003, the Trial Court decreed the suit and directed the defendants to give possession of the suit property to the plaintiffs. While passing the decree, the Trial Court in paragraph No.14, observed as under:

“14.....Therefore, even though the suit is dismissed against

defendant No.2 it will not bar the prayer of the plaintiff to claim possession of the suit property from the defendant Nos.1 to 3, as record of rights show only names of defendant Nos.1 and 3.”

3. It needs to be noted that during pendency of the suit, the plaintiffs failed to take steps against defendant No.2 and, therefore, the suit was dismissed against defendant No.2. The petitioner, therefore, filed an application purportedly under Order 21 Rule 97 of the Civil Procedure Code raising an objection that since the suit was dismissed against defendant No.2, the decree cannot be executed against defendant No.2.

4. The executing Court rejected such application holding that application under Order 21 Rule 97 of the Civil Procedure Code can be filed only by party who is not party to the suit. The petitioner being party to the suit (against whom suit was dismissed for want of steps) the executing Court dismissed the application of the petitioner.

5. On perusal of the quoted portion referred above, it appears that the Trial Court was aware about dismissal of the suit against defendant No.2 still the Trial Court consciously passed decree against all defendants i.e. defendant Nos.1 to 3. Result of such adjudication is that there is decree of possession passed against defendant No.2. In such situation remedy of petitioner is to challenge the decree dated 30th July 2003.

6. Therefore, in my opinion, the executing Court has rightly rejected the petitioner’s application raising objection to the executability of decree against the petitioner. Hence, in my

opinion, there is no merit in the writ petition.

7. The writ petition is dismissed. No costs.

8. Learned advocate for the petitioner prays for continuation of ad-interim relief dated 17th February 2023. Learned advocate for the respondents objects for continuation of ad-interim relief on the ground that there are two execution petitions filed by the parties to the petition which had effect of exchanging the property.

9. Considering the said contention, the status quo in relation to the possession shall be maintained by both the parties for period of four weeks from today.

(AMIT BORKAR, J.)