

AGK

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

WRIT PETITION NO.1679 OF 2020

Yasin Rahimtulla Jamadar

... Petitioner

V/s.

Amirbi Badshaha Jamadar & Ors.

... Respondents

Mr. Ajit M. Savagave for the petitioner.

Mr. Uday P. Warunjikar for the respondents.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 4, 2023

PC.:

1. The judgment debtor has filed present writ petition challenging order passed by the Executing Court issuing possession warrant under Order 21 Rule 35 of the Code of Civil Procedure, 1908.

2. According to the petitioner, the decree under execution is *ex parte* decree. His suit for partition of the suit property is decided and it is held that the petitioner has share in the property.

3. The objection raised by the petitioner can be treated as objection under Section 47 of the Code of Civil Procedure, 1908. It is well settled that the scope of inquiry under Section 47 is to adjudicate whether the decree is nullity or has become inexecutable due to subsequent change in law or conduct of the

parties.

4. In the facts of the case, the decree sought to be executed cannot be termed as decree as the decree is neither against dead person nor passed by the Court having no inherent jurisdiction.

5. However, it would be in the fitness of things that the petitioner to apply before appropriate Court for getting appropriate relief in relation to ventilation of his grievance. According to the petitioner, his application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 is pending. It will be open for the petitioner to apply before said Court for appropriate relief. However, considering the microscopic scope of Section 47 of the Code of Civil Procedure, 1908, the discretion exercised by the Trial Court cannot be termed as perverse.

6. The writ petition, therefore, stands dismissed. No costs.

7. The ad-interim relief granted earlier is extended for a period of three weeks from today.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 6 September 2023 to incorporate paragraph 7.