

VRJ

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

SECOND APPEAL NO.518 OF 2023

VAIBHAV
RAMESH
JADHAV
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Date: 2023.11.29
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Keshav Devram Tatane & Ors.

... Appellants

V/s.

Baburao Nandram Shinde Since
Deceased Through Legal Heirs

... Respondents

Mr. Rushikesh Kharat i/by Mr. Ambadas N. Mahale for
the appellants.

Mr. C. G. Gavnekar with Mr. Ashutosh Gavnekar with
Mr. Rohit Parab for the respondents.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 28, 2023

P.C.:

1. The obstructionist under Order 21 Rule 97 of the Civil Procedure Code, 1908 has filed present second appeal challenging the concurrent decrees passed by the Courts below.

2. The respondent No.3-original plaintiff filed Regular Civil Suit No.97 of 1973 for injunction. In the said suit the defendants filed counter claim for restoration of possession. The Trial Court dismissed the suit and counter claim. However, the Appellate Court in Regular Civil Appeal No.92 of 1993 allowed the counter claim and directed the plaintiff to handover possession of suit land to the defendants.

3. In furtherance of such decree, the defendant No.1 filed Execution Petition No.70 of 2001. On warrant of possession being issued, the present appellants filed an application under Order 21 Rule 97 of the Civil Procedure Code, 1908. The Trial Court and the Appellate Court rejected the application recording a finding that the appellants have failed to show their independent right, title and interest in the suit property.

4. According to learned advocate for the appellants, appellants are entitled to protect their possession based on adverse possession. In the context of said submission, I scrutinized the application filed by the appellants. On perusal of the application, it is clear that necessary pleadings giving rise to the plea of adverse possession are not pleaded. It is well settled that in absence of pleading no amount of evidence can substitute such pleading.

5. On meaningful reading of the application, it appears that the objection raised by the applicant is only to the extent that his possession should not be disturbed without following due process of law. No independent right or title or interest is pleaded in the obstruction application. In absence of such pleading of independent right or title or interest, there cannot be any evidence of said right being considered by the Courts below. On perusal of the judgment passed by the Courts below, it appears that there is neither pleading nor proof of independent right or title or interest. Therefore, Courts below have rightly rejected objection under Order 21 Rule 97 of the Civil Procedure Code. 1908. Therefore, no substantial question of law is involved.

6. The second appeal is dismissed. No costs.
7. Considering the fact that the execution petition is pending for more than twenty years, the executing Court shall decide the Execution Petition No.70 of 2001 within three months from today.

(AMIT BORKAR, J.)