

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14009 OF 2016

Vidyadhar Appa Chougule & Ors. ... Petitioners
V/s.
Jaipal Nemu Madvane & Ors. ... Respondents

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Mr. Shriram S. Kulkarni for petitioners.

Ms. Nishi Sanghvi i/by Mr. Kuldeep U. Nikam for
respondent Nos.1 to 5.

Ms. Leena Patil, 'B' Panel Counsel for State-respondent
Nos.6 to 11.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 2, 2024

PC.:

1. The petitioners were not party to the decreed suit, they filed an application raising independent claim for permanent injunction; therefore, their application needs to be treated as application under Order 21, Rule 97 of the Code of Civil Procedure, 1908.

2. Rule 101 of Order 21 confers status of a decree on an adjudication made by the Executing Court in exercise of power under Order 21, Rule 97. Hence, remedy of aggrieved person is to challenge such order by way of filing an appeal under Section 96

of CPC. Therefore, the writ petition is not maintainable. However, the petitioners are entitled to raise all contentions on merits in an appeal under Section 96 of CPC. Time spent in prosecuting the present petition be excluded for the purpose of counting delay in filing appeal.

(AMIT BORKAR, J.)