

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 348 OF 2015
WITH
CIVIL APPLICATION NO. 817 OF 2015
IN
SECOND APPEAL NO. 348 OF 2015**

Shri Vasant Ankush Mestri ... Appellant/Applicant

vs.

Central Government through Superintendent ... Respondents
of Post Office and Ors

Mr. Mahesh V. Rawool, for Appellant/Applicant.

Mr. Pranil K. Sonawane, Mr. Raj. Chourasia, for Respondents.

CORAM : GAURI GODSE, J.

DATED : 17th DECEMBER 2024

ORDER:

1. This second appeal is preferred by the obstructionist who had filed the application under Order XXI Rule 97 of the Civil Procedure Code, 1908 ('CPC') objecting to execution of the decree for possession passed in favour of respondent no.1. The application was rejected on the ground that there was no evidence produced by the appellant to support his contention to obstruct the execution of the decree in respect of the property belonging to respondent no.1.

The first appeal preferred by the appellant is dismissed. Hence, this second appeal.

2. Learned counsel for the appellant submits that the execution proceedings is filed for executing decree passed against the appellant's father. He submits that the appellant was not a party to the suit filed by respondent no.1. Hence, the decree passed on 30th November 2004, directing the appellant's father to remove the hut constructed on the suit property cannot be executed against the appellant's structure. He submits that decree against his father's structure is sought to be executed against the appellant's structure. The learned counsel for the appellant therefore submits that the second appeal raises substantial question of law on the ground that the decree against appellant's father cannot be executed against appellant's structure.

3. The application filed before the executing court is dismissed for want of any supporting evidence to indicate that the appellant owns any structure standing on the suit property. Learned counsel for the appellant is unable to point out any supporting evidence in terms of the prayers made in the application filed by the appellant under Order XXI Rule 97 of the CPC. Both the courts have concurrently held that the appellant's contentions are not supported

by any evidence.

4. The concurrent findings recorded by both the courts hold that the appellant failed to produce any document of title to show that any portion of the suit land acquired by the respondent-decree holder is in possession of the appellant. It is further held that the appellant failed to establish any title to the municipal house no. 209-D, which he claims to be in possession and claims that it is situated on the suit land.

5. Thus, the application filed by the appellant is dismissed on the ground that it is filed only to protract the execution of the decree passed in favour of respondent no.1.

6. In view of the findings of facts recorded by the first appellate court, the grounds raised on behalf of the appellant would not require any consideration by this court.

7. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed. In view of dismissal of the second appeal, pending applications if any are disposed of as infructuous.

(GAURI GODSE, J.)