



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.113 OF 2025
WITH
CIVIL APPLICATION NO.3154 OF 2025**

1. Balasaheb Namdev Daule,
Age:- 57 years, Occ. Agril,
2. Saraswati Namdev Daule,
Age:- 81 years, Occ. Agril

Both R/o. Newasa Budruk, Tq. Newasa
Dist. Ahmednagar

..Appellants
(Orig. Objectors)

Versus

1. Balasaheb Uttam Shinde,
Age:- 56 years, Occ. Agri,
R/o. Khupti, Tq. Newasa,
Dist. Ahmednagar.
2. Sharad Namdev Daule,
Age: 57 years, Occ. Agri,
R/o. Newasa Budruk, Tq. Newasa,
Dist. Ahmednagar.

..Respondents
(Resp. No.1 is decree Holder
and Resp. No.2 Judgment Debtor.)

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Mr. R. R. Karpe, Advocate for Appellants.

Mr. Yogesh S. Thorat, Advocate for Respondents.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 17th APRIL, 2025.**

ORDER:-

1. The present Second Appeal is filed aggrieved by judgment and order dated 14.01.2025 passed by learned District Judge, Newasa in Regular Civil Appeal No.35/2023, thereby upholding judgment and order dated 26.09.2016 passed by Civil Judge, Senior

Division, Newasa below Exhibit-30 in Regular Darkhast No.3/2015. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The fact giving rise to present Second Appeal can be summarized as under:

The dispute pertains to land Gut No.173, admeasuring 2 acres situated at village Khupti, Tq. Newasa, Dist. Ahmednagar. It is joint family property of respondent no.2 and his brothers. The widow and daughter of deceased Arun Daule instituted suit for partition and separate possession vide Regular Civil Suit No.471/2001. The suit came to be decreed and decree attained finality in Regular Civil Appeal No.10/2015. As per decree passed by Appellate Court, plaintiffs in Regular Civil Suit No.471/2001 i.e. Sunita and Divya held entitled for 2/25th share, whereas Balasaheb Namdev Daule (appellant no.1) and Sharad Namdev Daule (present respondent no.2) are held entitled for 6/25th share, whereas present appellant no.2-Saraswati Namdev Daule held entitled for 8/25th share.

During pendency of aforesaid proceeding, respondent no.2-Sharad Daule executed agreement to sale in respect of 80R land from Gut No.173 in favour of respondent no.1 i.e. Balasaheb Uttam Shinde. He instituted Regular Civil Suit No.36/2010 seeking decree of specific performance of contract against respondent no.2-

Sharad Daule. That suit ended in compromise, whereby respondent no.2-Sharad Daule agreed to execute sale deed in favour of respondent no.1-Balasaheb Uttam Shinde after decision of Regular Civil Suit No.471/2001. Eventually, he filed Regular Darkhast No.3/2015 seeking execution of decree for specific performance of contract passed in Regular Civil Suit No.36/2010 against respondent no.2-Sharad Daule. In that execution proceeding, present appellants filed objection under Order XXI Rule 97 of Code of Civil Procedure contending that decree in Regular Civil Appeal No.10/2015 is not executable. According to them, respondent no.2 hardly entitled for 19R land from Gut No.173, whereas he agreed to sell 80R land in favour of respondent no.1-Balasaheb Uttam Shinde. On the basis of such agreement, decree is passed and same is put to execution. The execution of decree for specific performance of contract may prejudice rights of appellants/objectors, who are co-sharers in Gut No.173 alongwith respondent no.2-Sharad Daule.

It is further contended that since respondent no.2 would be entitled for only 19R share from Gut No.173 as per partition decree, that would be fragment and hit by provision of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. As such, decree for specific performance of contract is un-executable and Regular Darkhast No.3/2015 is liable

to be dismissed. The aforesaid objection came to be rejected by Executing Court vide order dated 26.09.2016. The objectors filed Appeal before District Judge vide Regular Civil Appeal No.35/2023, which came to be dismissed on 14.01.2025. Hence, this Second Appeal.

3. Mr. Karpe, learned Advocate appearing for appellants vehemently submits that respondent no.2-Sharad Daule executed agreement to sale in favour of respondent no.1-Balasaheb Uttam Shinde during pendency of suit for partition and separate possession. As such, he cannot claim any right over suit property. He would further submit that on the basis of aforesaid agreement to sale, respondent no.1-Balasaheb Uttam Shinde obtained compromise decree in collusion with respondent no.2 for specific performance of contract in respect of 80R land from Gut No.173. The appellants/objectors were not party to said proceeding and that decree would not bind their rights. He would further point out that as per partition decree passed in Regular Civil Suit No.471/2001, respondent no.2-Sharad Daule is held entitled for 6/25th share in suit properties. Therefore, he can hardly claim 19R land out of land Gut No.173 that would be fragmented and hit by provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. However, Courts below failed to consider aforesaid objections and rejected the same on erroneous count.

4. I have considered submissions advanced on behalf of appellants. I have perused reasoning adopted by Executing Court as well as First Appellate Court while dealing with objections. Apparently, respondent no.1-Balasaheb Uttam Shinde has set up proceeding for execution of decree of specific performance of contract passed in his favour in Regular Civil Suit No.36/2010. The decree is passed on the basis of agreement to sale for 80R land from Gut No.173 executed by respondent no.2-Sharad Daule. It is true that, aforesaid property was subject matter of partition suit in Regular Civil Suit No.471/2001 and Regular Civil Appeal No.10/2015, in which respondent no.2-Sharad Daule is held entitled for 6/25th share in suit properties. Pertinently, apart from Gut No.173, there are other eight properties of joint family of objectors and respondent no.2, which were subject matter of partition suit in Regular Civil Suit No.471/2001.

5. In this background, question is whether appellants could have maintain objection under Order XXI Rule 97 of Code of Civil Procedure to the execution of decree for specific performance of contract passed in Regular Civil Suit No.36/2010. Both Courts have concurrently held that appellants/objectors cannot resist execution of decree. Pertinently, decree for specific performance of contract is based on agreement between parties to the contract. It is not in dispute that decree has been passed against respondent

no.2-Sharad Daule, who had executed agreement to sale in favour of respondent no.1-Balasaheb Uttam Shinde. It cannot be disputed that even sale deed is executed in pursuance of decree in favour of respondent no.1-Balasaheb Uttam Shinde, that would not bind or supersede rights of appellants. The sale deed would be valid only to the extent of disposable right held by respondent no.2-Sharad Daule. The respondent no.1-Balasaheb Shinde (decree holder) even gets executed sale deed in pursuance to decree, he cannot claim exclusive right to receive particular part of the property on the strength of sale deed. He being purchaser *pendente lite* would step into shoes of his vendor and at the most claim for equitable partition and allotment/adjustment of land in execution of partition decree. The Supreme Court of India in case of ***Khemchand Shankar Choudhari and Another Vs. Vishnu Hari Patil and Others***¹, has observed as follows:-

“A transferee from a party of a property which is the subject matter of partition can exercise all the rights of the transferor. There is no dispute that a party can ask for an equitable partition. A transferee from him, therefore, can also do so. Such a construction of section 54 of the Code of Civil Procedure advances the cause of justice. Otherwise in every case where a party dies, or where a party is adjudicated as an insolvent or where he transfers some interest in the suit property pendente lite the matter has got to be referred back to the civil court even though there may be no dispute about the succession, devolution or transfer of interest. In any such case where there is no dispute if the Collector makes an equitable partition taking into consideration the interests of all concerned including those on whom any interest in the subject matter has devolved, he would neither be violating the decree nor transgressing any law.”

¹ (1983) 1 SCC 18.

6. In light of aforesaid exposition of law, objectors cannot resist decree for specific performance of contract, since its execution is not likely to prejudice or supersede their rights. On execution of decree of specific performance of contract, respondent no.1-Balasaheb Uttam Shinde would acquire title in joint family property in share of respondent no.2-Sharad Daule and then would be entitled to seek equitable partition and allotment of land to the extent of entitlement of his vendor and his purchase. In that view of the matter, no fault can be found in concurrent findings recorded by Executing Court and First Appellate Court. Hence, no substantial question of law arises for consideration in this Second Appeal. Hence, Second Appeal stands dismissed with aforesaid observations.

7. In view of dismissal of Second Appeal, pending Civil Application also stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE