



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL REVISION APPLICATION NO.71 OF 2018
AND
CIVIL REVISION APPLICATION NO.72 OF 2018
AND
CIVIL REVISION APPLICATION NO.73 OF 2018
AND
CIVIL REVISION APPLICATION NO.74 OF 2018
AND
CIVIL REVISION APPLICATION NO.75 OF 2018
AND
CIVIL REVISION APPLICATION NO.76 OF 2018
AND
CIVIL REVISION APPLICATION NO.77 OF 2018**

1. Pandharinath S/o. Dashrath Chavan
Age: 78 years, Occ. Business
2. Prakash S/o. Pandharinath Chavan
Age: 42 years, Occ. Business
Both R/o. Vinayak Colony, Vaijapur,
Tq. and Dist. Aurangabad ..Applicants

Versus

1. Jafar Fate Mohd.
Age: Major, Occ. Business
R/o. Vaijapur, Dist. Aurangabad.
2. State of Maharashtra
Through Sub Divisional Officer, Vaijapur,
Dist. Aurangabad. ..Respondents

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Mr. R. N. Dhorde, Senior Advocate i/by. Mr. P. S. Dighe a/w Mr. V. R. Dhorde, Advocate for Applicants.
Mr. B. B. Kulkarni, Advocate for Respondent No.1.
Mr. V. S. Badakh, AGP for Respondent No.2.

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CORAM : S. G. CHAPALGAONKAR, J.

Reserved On : 08th MAY, 2025.
Pronounced On : 09th JUNE, 2025.

JUDGMENT:-

1. The applicants impugn order dated 19.03.2018 passed by learned Civil Judge Junior Division, Vaijapur in R.D. Nos.40/2015,

36/2015, 37/2015, 38/2015, 39/2015, 41/2015 and 42/2015, by which application filed below Exhibits 62, 62, 67, 81, 87 and 123 by Sub Divisional Officer on behalf of State has been allowed holding that Civil Judge Junior Division has no jurisdiction to entertain and try objection applications filed by State in pending execution proceeding. Eventually, request letter is issued to Principal District Judge, Aurangabad to withdraw execution proceeding alongwith objection petitions filed by State from the file of Civil Judge Junior Division, Vaijapur and transfer same to the Court of Civil Judge Senior Division, Vaijapur administratively vide Paragraph No.233 of the Civil Manual.

2. Brief facts giving rise to present Civil Revision Applications can be narrated as under:

The applicants (decree holders) purchased house property out of Survey No.179/1/1 (CTS No.963) situated at Vaijapur from Vinodkumar Hansraj Agarwal. It consists of Cinema Theater and Eleven shops, which were occupied by tenants. Since seven tenants were in default of rent, applicants had instituted suits for recovery of rent and possession against them in the Court of Civil Judge Junior Division at Vaijapur. On 23.02.2009, suits were decreed and decree has been confirmed upto this Court. The applicants filed proceeding for execution of decree vide R.D. Nos.40/2015, 36/2015, 37/2015, 38/2015, 39/2015, 41/2015 and

42/2015 before Civil Judge Junior Division at Vaijapur. At this stage, Sub Divisional Officer filed objections to execution of decree and delivery of possession on the ground that decree has been obtained without adding State of Maharashtra as party. The land Survey No.180/1 is owned by State Government. The Survey No.179/1 is situated on Northern side of Survey No.180/1. The suit property is part of Government land. The owners of Survey No.179/1/1 have encroached upon Government land and raised construction of shops, so also inducted tenants. The previous owner Vinodkumar Agarwal was receiving rent. The dispute as to the ownership of suit property is pending since 1965. The applicants have purchased suit property in the year 1996 from original owner Mr. Vinodkumar Agarwal. It is, therefore, prayed that decree passed in suit be canceled.

3. During pendency of aforesaid objection petitions, Sub Divisional Officer moved applications contending that since objections are instituted on behalf of State, proceeding requires to be transferred to Court of Civil Judge Senior Division in view of Section 32 of the Maharashtra Civil Courts Act, 1869. The Civil Judge Junior Division ceased to hold jurisdiction to take up objections filed on behalf of State, which requires hearing and disposal as a suit in light of Paragraph No.345 of Civil Manual.

The learned Civil Judge Junior Division, Vaijapur allowed aforesaid objections and passed impugned order.

4. Mr. Dhorde, learned Senior Advocate appearing for applicants would submit that applicants are landlord. The eviction decree has been passed against tenants by Competent Court in the year 2009. The tenants are directed to deliver possession of suit property to applicants. The decree has been confirmed by this Court while dismissing Second Appeals of tenants in the year 2014. The execution proceeding is pending since 2015. He would submit that due to political pressure, objection petitions have been filed by Sub Divisional Officer, who has no right to resist execution of decree. Mr. Dhorde would invite attention of this Court to the observations of Additional Collector, Aurangabad while recording his order dated 04.11.1992, which records that land Survey No.179/1 is private property and Government land is part and parcel of Survey No.180. He would further invite attention of this Court to the observations made in order dated 22.09.2014 passed by this Court in Second Appeal No.812/2012 alongwith companion Appeals, which records that appellants/tenants have admitted that vendors of applicants was their landlord and they were paying rent to him. As such, landlord and tenants relationship is admitted with predecessor in title of applicants. Mr. Dhorde would submit that this Court while deciding Second Appeals has observed that

“whether shops in questions are standing in Government land encroached by Nadarshah or by Hansraj is an independent question between Government and Hansraj or his successors *interse*. The status of tenants would remain as it is. They cannot raise grievance denying title of their landlord or claim that property in question is Government property”. Mr. Dhorde would further submit that objection raised on behalf of Sub Divisional Officer is untenable. He would further urge that Civil Judge Junior Division, Vaijapur had jurisdiction to entertain execution proceeding and deal with objection raised by respondent no.2 in accordance with law. The impugned orders were passed relying upon Section 32 of the Maharashtra Civil Courts Act and Paragraph No.345 of Civil Manual is untenable and liable to be quashed and set aside.

5. Per contra, Mr. Badakh, learned AGP for respondent-State vehemently submits that suit property is part of Government land. The decree under execution is collusive. Therefore, objection under Order XXI Rule 97 of Code of Civil Procedure has been rightly raised. According to him, even a stranger who obstructs or resists delivery of possession of property, claiming derivative title from the judgment debtor or independent right, title, or interest in the decretal property, has the right to raise an objection under Rule 97 of the Code of Civil Procedure. The Executing Court is under

obligation to determine all such objections under Rule 101. Mr. Badakh would submit that in view of provisions of Section 32 of Maharashtra Civil Courts Act, no subordinate Court other than Court of Civil Judge Senior Division can receive or register any suit in which any officer of Government in his official capacity is a party and every such proceeding needs to be refer to Court of Civil Judge Senior Division, who is empowered to hear and decide the same. He would further submit that Paragraph No.345 of the Civil Manual provides that any disputes arise in the course of suit, the provisions as to suits shall be applicable as objections under Order XXI Rule 97 requires to be decided as a suit where Government is a party, proceeding is required to be transferred or placed for decision before Civil Judge Senior Division. In support of his contentions he relies upon following judgments.

1. ***Periyammal (D) through Lrs. And others Vs. V. Rajmani and Another Etc.¹***
2. ***Brahmdeo Chaudhari Vs. Rishikesh Jaiswal²***
3. ***Tanzeem E Sufia Vs. Bibi Haliman and others, Civil Appeal No.5457/2022 (SC).***
4. ***Shreenath Vs. Rajesh and Others³***

6. Having considered submissions advanced by learned Advocates appearing for respective parties, limited issue that arises for consideration in these Civil Revision Applications is

¹ 2025 INSC 329.

² AIR 1997 SC 856.

³ 1998 4 SCC 543.

“Whether in execution proceeding initiated by landlord against tenants in pursuance of decree of eviction/delivery of possession, if objection to execution of decree is raised on behalf of State through its authorized officer, proceeding as to the objection can be taken up by Civil Judge Junior Division?”

7. It is apposite to refer to Section 32 of the Maharashtra Civil Courts Act, 1869, which reads thus:

“¹[32. (1) No subordinate Court other than the Court of ²[Civil Judge (Senior Division)] and no court of small causes shall receive or register any suit in which ³[the Crown] or any officer of the ⁴[Government] in his official capacity is a party.

(2) In every such case the Plaintiff shall be referred to Court of the ²[Civil Judge (Senior Division)] and such suit shall be instituted only in the Court of the ²[Civil Judge (Senior Division)] and shall be heard by such ⁵[Civil Judge], subject to the provisions of section 24 of the Code of Civil Procedure, 1908.”

*(3)
 (a)
 (b)”*

8. Plain reading of aforesaid provision shows that only Court of Civil Judge Senior Division is competent to receive, register or decide suit, wherein Government or its officers in official capacity is a party.

9. Similarly, Paragraph No.345 of Civil Manual mandates that when disputes arise in the course of execution proceedings, the provisions as to suits, unless inapplicable, should be followed. In

such cases, issues must be framed, evidence taken and judgment written according to the law applicable to suits.

10. It is well settled that objection to execution of decree has to be decided by following procedure under Rule 101. Further Rule 103 provides that application adjudicated upon under Rule 98 or Rule 100 shall have the same force and will be subject to the same conditions as an appeal as if it were a decree. At this stage observations of Supreme Court of India in case of ***Periyammal (D) through Lrs. and others*** (supra) can be referred, which reads thus:

“49. Thus, Rule 97 not only provides remedy to a decree holder in obtaining possession of an immovable property but also to a stranger who obstructs or resists delivery of possession of the property by claiming derivative title from the judgment debtor or independent right, title or interest in the decretal property. Whereas, Rule 99 gives right to a third party claiming right, title or interest in the property to seek restoration of the decretal property. Suffice it to say that the remedy under Rule 99 is available when a person claiming right to the decretal property is already dispossessed.

*50. Rule 101 enjoins upon the executing Court dealing with application under Rule 97 or 99 to determine all questions including questions relating to right, title or interest in the property, arising between the parties and relevant to the adjudication of the application. As held by this Court in **Silverline Forum** (supra) the question that the executing court is obliged to determine under Rule 101 must possess to adjuncts viz. (i) that such question should have legally arisen between the parties and (ii) such question must be relevant for consideration and determination between the parties. Upon adjudication of such questions, the executing court is under an obligation to pass appropriate order as contemplated under Rule 98 or 100, as the case may be. When eventually such order is passed, it would be treated as decree and no separate Suit would lie against such order. It*

therefore follows that the only remedy is to prefer an appeal before the appropriate court against such deemed decree.”

11. It is, therefore, evident that Executing Court while dealing with objections has to first find out as to whether question for adjudication has been legally arisen between parties and relevant for consideration and determination between parties. Upon adjudication of such question, Executing Court is under obligation to pass appropriate order as contemplated under Order XXI Rule 98 or 100, as the case may be.

12. Looking to aforesaid exposition of law, it can be observed that objection to execution of decree requires comprehensive decision after following procedure of suit and if objection to execution of decree is by State Government or authorized officer on behalf of State, Section 32 of Maharashtra Civil Courts Act will necessarily oust jurisdiction of subordinate Judge. The Constitution Bench of this Court in case of *The Secretary of State for India Vs. Narsibhai Dadabhai Patel*⁴ observed that even in cases where State has been made party by Court at the request of officer and no suit has been instituted against him by plaintiff, Section 32 confers exclusive jurisdiction of trying suit of specified description by District Judge (now Civil Judge Senior Division).

13. In light of aforesaid exposition of law, no fault can be found in impugned order whereby learned Civil Judge Junior Division

⁴ AIR 1924 Bom 65.

recorded that he has no jurisdiction to entertain and try objection application by State in execution proceeding with further stipulation to issue request letter to Principal District Judge, Aurangabad to withdraw execution proceedings and transfer the same to the Court of Civil Judge Senior Division vide Paragraph No.233 of Civil Manual.

14. Although this Court affirmed impugned order, it can be observed that execution proceeding is arisen out of eviction decree passed against tenants in a suit instituted by landlord. The issue as to whether State Government can assert its title over suit property has been dealt with by this Court while deciding Second Appeals between parties and after recording findings that tenants cannot dispute title of landlord, decree has been passed. It is evident that shops have been constructed by predecessors in title of applicants. The tenants were inducted by him and he was receiving rent. If that is so, whether shops in question are constructed on Government land cannot be subject matter of execution of eviction decree passed in favour of landlord. In such case, Executing Court will have to first decide if question posed in objection legally arise between parties and relevant for consideration or determination between parties to the suit. The question that arises if Government wants to claim any right over the lands in possession of landlord or his tenants, the Government

can take up appropriate proceeding as permissible under law to secure possession of property. Therefore, possibility that objection petition has been brought at the instance of tenants to prolonge execution of decree needs examination by Executing Court before entering into further question.

15. The Executing Court will have to take note of observations made by this Court while deciding Second Appeals. Primary there appears dispute as to whether shops are constructed on Government land from Survey No.180 or those are on the land from Survey No.179/1. Such question is definitely unconcerned with execution of decree in present suit. Keeping in mind aforesaid observations, Executing Court shall proceed to deal with objection as expeditiously as possible and in any case within a period of six months from the date of this order.

16. In that view of the matter, Civil Revision Applications stand rejected.

(S. G. CHAPALGAONKAR)
JUDGE