



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

WRIT PETITION NO. 8696 OF 2025

**SOMNATH PANDHARINATH AVHAD AND ANOTHER
VERSUS
DYANESHWAR BABAN PATARE AND OTHERS**

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Mr. Dond Manoj A., Advocate for the Petitioner
Mr. K. S. Patil, AGP for Respondents-State

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 18.07.2025

PER COURT :-

1. Heard Mr. Manoj Dond, learned Advocate appearing for petitioner.
2. The petitioner impugns order dated 01.07.2025 passed by learned Civil Judge Senior Division, Newasa Dist. Ahmednagar in Kaccha Register No.655 of 2025 so also order dated 24.06.2025 passed by learned Tahsildar in Darkhast Case No.75 of 2024 regarding distribution of property as per execution.
3. Mr. Dond, learned Advocate appearing for petitioner submits that partition decree passed in Regular Civil Suit No.156 of 2000 is in process of execution. The suit has instituted by one Dnyaneshwar Patare for partition and separate possession and same is decreed on 15.12.2003. Decree passed in suit has attained finality. During pendency of suit, defendant No.3, namely, Anil Patare sold 98 R

land to one Sunanda Ghuge and on 27.04.2007, applicants have purchased the same from Sunanda Ghuge under two different sale deeds.

4. The decree passed by Trial Court in Regular Civil Suit No.156 of 2000 is now transmitted to learned Tahsildar for execution. Learned Tahsildar has prepared chart for distribution of property among parties to the suit. Petitioner was unaware about aforesaid facts and now he is sought to be dispossessed in execution of decree.

5. Mr. Dond submits that petitioner, therefore, filed objection under Order XXI Rule 97 before learned Executing Court. However, same has been rejected as not maintainable vide impugned order dated 01.07.2025. Mr. Dond relies upon judgment of Hon'ble Supreme Court in case of ***Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal & Another reported in AIR (1997) SCW 685***, as well as judgment in case of ***Periyammal (Dead) Through LRS & ORS Vs. V. Rajamani & Another*** in Civil Appeal Nos.3640-3642 of 2025, to contend that objection under Order XXI Rule 97 needs to be decided as if the suit and there cannot be summary rejection.

6. It is apparent that petitioner is purchaser of suit property from judgment debtor, no independent right is claimed by petitioner in suit property except right based on sale deeds dated 27.04.2007 executed by Sunanda Ghuge, who had purchased property from defendant No.3-Anil

Patare. The decree passed in partition suit has attained finality. Precept has been issued under Section 54 of Code of Civil Procedure for execution of decree and learned Tahsildar has carved out shares in accordance with decree for delivering possession of property.

7. In this background, only right petitioner can have is to seek equitable distribution of property in a capacity of purchaser from judgment debtor. In light of law laid down by Hon'ble Supreme Court in case of ***Khemchand Shankar Choudhary and Another Vs. Vishnu Hari Patil & Others, reported in AIR 1983 SC 124***, petitioner is definitely entitled to make necessary representation to learned Collector seeking equitable distribution of property or adjustment of share of judgment debtor No.3 against land possessed by him. However, he cannot claim any independent right and raise objection under Order XXI Rule 97 of Code of Civil Procedure and obstruct execution of decree. The learned Trial Court was therefore right in rejecting application.

8. In that view of the matter, writ petition sans merit and is accordingly rejected with liberty in favour of petitioner to make necessary representation to learned Collector.

[S. G. CHAPALGAONKAR, J.]