



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 WRIT PETITION NO. 13800 OF 2025

PANDIT SHRIPAT RAKADE DIED THR LRS KASABAI PANDIT
RAKADE AND OTHERS

VERSUS

BABURAO RAMA RAKADE THROUGH HIS GPA HOLDER SHIVAJI
BABURAO RAKADE AND OTHERS

...

Advocate for the Petitioner : Mr. Gore Ravindra Vitthal

Advocate for Respondent No.1:

Mr. S. V. Suryawanshi h/f. Mr. Ramdas B. Singare

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CORAM : ARUN R. PEDNEKER, J.

DATE : 26.11.2025

PER COURT:

1. Heard.
2. Petitioner / Judgment Debtors challenges the order dated 29.10.2025, passed by the executing court on the ground that the decree is passed against the parents of the present petitioners and it is not against the present petitioners and, as such, he submits that the decree of injunction cannot be executed against the present petitioners.
3. This court in the earlier round in Writ Petition No.3801 of 2024 by order dated 25.06.2025, observed as under:

“7. Subsequently, the judgment debtor nos. 2 & 3 expired and their legal representatives were allowed to be brought on record vide order dated 02.01.2019. The

legal representatives of judgment debtor no. 3 filed an objection under Order XXI Rule 97 of the Code of Civil Procedure on 30.01.1994. The learned Executing Court has rejected the said petition vide order dated 24.10.2019.

11. It is also well settled that the Executing Court cannot go behind the decree. The decree for perpetual injunction granted in favour of the decree holder conclusively establishes his possession on the date of decree. The judgment debtors, by asserting their own possession and by contending that execution would amount to grant of possession, have admitted their act of dispossession in breach of the decree. Hence, there is no necessity to frame any issue or permit evidence on the aspect of possession.”

In the earlier proceedings challenge was made to the order of the executing court by the present petitioners / judgment debtors in the Darkhast No.7 of 2011. They had filed objection and had prayed to frame issue as regards the possession. However, this court at paragraph no.11 has observed that the executing court cannot go behind the decree. The decree for perpetual injunction granted in favour of the decree holder conclusively establishes the possession of decree holder on the date of decree. The judgment debtors, by asserting their own possession and by contending that execution would amount to grant of possession, have admitted their act of dispossession in breach of the decree. Hence, there is no necessity to frame any issue or permit evidence on the aspect of possession and, thus, has rejected the writ petition. The above noted order of this court has attained finality.

4. Another objection is now made contending that the petitioners are the legal heirs of the original judgment debtors and they are not bound by the decree.

5. The petitioners have now stepped into the shoes of the Judgment Debtors and are bound by the decree. The executing court to proceed to execute the decree.

6. The Writ Petition stands dismissed.

[ARUN R. PEDNEKER, J.]

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