



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

SECOND APPEAL NO. 67 OF 2025

Rudrashil Subhash Bhavre

.. Appellant

Versus

Maroti Mariba Manwar and others

.. Respondents

Shri Shaikh Rauf Shaikh, Advocate for the Appellant.

Shri Prakash G. Gunale, Advocate for the Respondent Nos. 1 to 3.

CORAM : SHAILESH P. BRAHME, J.

DATE : 18TH JUNE, 2025.

FINAL ORDER :

. Heard Mr. Shaikh learned advocate for the appellant and Mr. Gunale, learned advocate for the respondent Nos. 1 to 3 finally at the admission stage.

2. This appeal is emanating from proceedings U/O XXI Rule 97 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the “Code”) initiated at the instance of appellant being obstructionist in R. D. No. 02 of 2014. The Executing Court rejected application Exhibit 154 of the appellant U/O XXI Rule 97 of the Code, which is confirmed by the lower appellate Court vide judgment and decree dated 28th August, 2024. The controversy pertains to possession of the appellant/obstructionist over part of land gut No. 57.

3. Respondent Nos. 1 to 3 had filed R.C.S. No. 75 of 2001 for possession against the respondent Nos. 4 to 6 in respect of land gut No. 57, 58 and 59, which was dismissed by the Trial Court, but in R.C.A. No. 27 of 2003 decree was reversed on 19.11.2007. The same is confirmed upto Apex Court. The respondent No. 4/Subhash, who is the father of the present appellant claimed title on the basis of will executed by Anjanabai. His plea was negatived, which is maintained upto the Supreme Court. The will in question was declared to be null and void, which has attained finality. In this backdrop, appellant approached the Executing Court contending that he is in possession of land gut No. 57 and he acquired title through partition. Mutation entry No. 273 effected on 30.11.2001 and 7/12 extract indicating possession of the appellant are pressed into service.

4. Learned counsel for the appellant submits that both the Courts below did not deal with factum of possession and especially the revenue record. The appellant has independent right to remain in possession. He was necessary party to earlier proceedings. It is contended that decree passed in earlier litigation is not executable and binding upon him. It is further submitted that even point for determination in respect of his possession has not been framed. He would further submit that panchanama Exhibit 160 would indicate his possession and he is entitled to defend his possession if any independent suit is filed against him by the owners. His grievance has not been

properly adjudicated and, therefore, he is entitled to resist the execution of the decree. Reliance is placed on Exhibit 184, which is extract of ration card indicating independent possession of the appellant.

5. Learned counsel for the appellant points out substantial question of law enumerated in ground No. 16 of the memo of second appeal. He also relied on the judgment of the Supreme Court in the matter of Gurunath Manohar Pavaskar and others Vs. Nagesh Siddappa Navalgund and others reported in *AIR 2008 SC 901*.

6. Per contra, learned counsel Mr. Gunale for the respondent Nos. 1 to 3 would submit that both the Courts below have taken reasonable and plausible view. The possession of the appellant is not lawful. He is claiming possession through his father, but his father was not having title of the property. It is further submitted that obstruction is proxy one and artificially created to remain in possession or to avoid the decree of possession. Another such obstruction was made at the instance of Dattatraya, which was instigated by the judgment debtor – Suresh.

7. I have considered rival submissions of the parties. Undisputedly, the decree of declaration and possession passed in favour of the respondent Nos. 1 to 3 has been confirmed upto the Supreme Court. In the present appeal controversy is restricted to land gut No. 57. The finding that will executed by Anjanabai

in favour of the respondent No. 4- Subhash is declared to be null and void. The respondent No. 4 – judgment debtor claims title and possession on the basis of said will. The theory of the appellant that he received possession in partition and mutation entry No. 273 was effected on 30.11.2001 cannot be of any avail to him. Once the source of possession and title is held to be illegal by concluded litigation, appellant cannot re-agitate his right in the subject matter.

8. It is matter of record that the respondent No. 4/Subhash was not having any lawful possession. Consequentially, his disposition of the suit land by way of partition has to be treated to be illegal. If the possession of the appellant is illegal, how soever independently, it may be protected. Therefore, the date of partition or the mutation entry is not significant, once partition or the possession is not valid and lawful. Respondent No. 4, father of the appellant was the party before the earlier litigation. The decree passed in earlier round of litigation is binding upon, not only the respondent No. 4, but the appellant also. No lawful right exists in the appellant to obstruct the decree of possession. In view of the judgment of the Supreme Court in the matter of Silverline Forum Pvt. Ltd. Vs. Rajiv Trust reported in *AIR 1998 SC 1754*, appellant failed to show his legal arisen enforceable right.

9. The contentions of the appellant that he is independently in possession land gut No. 57 and he has no concern with his father – respondent No. 4 is of no consequence. Both the Courts below

have properly dealt with the matter. There is concurrent finding of fact. There is no substantial question of law pointed out. Second appeal is dismissed.

[SHAILESH P. BRAHME J.]

bsb/June 25