

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO. 21342 OF 2025
WITH
INTERIM APPLICATION NO. 9475 OF 2025
(Stay)

Pushpa Mahadev Jadhav and Ors. Appellants/Applicants
Versus
Milind Barma Dhage and Ors. Respondents

Mr. Rajesh Kanojia i/b Mr. Rohan Surve, for Applicants/Appellants.
Ms. Babita P. Paday a/w. Mr. Dinesh R. Sonawane, Mr. Ramesh Golait
for Respondents.

CORAM : M.M. SATHAYE, J.

DATE : 18th AUGUST, 2025

P.C. :

1. Heard learned advocates for the parties.
2. The Appellants are Obstructionists who are challenging the order dated 23.04.2025 passed in Notice of Motion No.1230 of 2021 filed in Execution Application No.5 of 2010. By the said impugned order, the motion filed by the Appellants under Order XXI Rule 97 to 101 of Civil Procedure Code, 1908 ('CPC', for short) is rejected.
3. Few facts necessary for disposal of this appeal, are as under. Respondent No.1 Original Plaintiff had filed Civil Suit No. 2478 of 1999 against Respondent Nos.2 to 4. The said suit is decreed by the Judgment and Decree dated 29.04.2009 passed by City Civil Court at Dindoshi, Goregaon (Borivali Division). Under the said decree, the Defendants are directed to hand over peaceful and vacant possession

of the suit premises to the present Respondent No.1 – Plaintiff. Defendant No. 3 filed first appeal in this Court, where consent terms are filed by heirs of Defendant No. 3 agreeing to hand over possession. The subject matter of the appeal is a room admeasuring 10' x 13', situated at Sarvodaya Chawl, Behrambagu, Link Road Jogeshwari (W), Mumbai – 400 102.

4. Learned advocate for the Appellants submitted that the Appellants are in possession of the suit premises and there have documents in support of their claim such as ration card, electricity bills, election identity cards, birth certificates, death certificate, Aadhaar cards, driving licenses, voters lists etc. He also relied on Annexure-II prepared under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act of 1971 in which entry no.232 reflects their names. He submits that the Execution Court has not considered the documents in proper perspective in as much as their possession could not be disputed.

5. Learned advocate for Respondent No.1 (contesting Respondent-Plaintiff/Decree-holder) contends that this dispute necessarily requires finding about independent right of the obstructionist, which is not established. She points out that when warrant of possession was issued in execution, the bailiff report records that the present Appellants claimed to be 'tenants' of the suit premises. She contends that the Appellants are acting in collusion with Defendant Nos. 3a and 3b. It is submitted that documents relied upon by the Appellants are of some other property. It is also contended that original Defendant no. 3 was in possession of the suit

premises, who had made a statement that he will not part with possession, but that statement is breached and the Appellants / obstructionist are inducted illegally. She contends that there is no merit in the obstructionists' claim and the appeal be dismissed.

6. I have considered the submissions and perused the impugned judgment. It shows that the Appellants came before the Court with a case that their father was the owner of the suit premises.

7. At the outset, it must be noted that in response to the possession warrant, the Bailiff was informed that Appellants were tenants. At that time, no rent receipt was produced, however, the possession was not handed over and therefore obstruction was recorded. In the present motion, the stand is changed and it is claimed that the Appellants are owners of the suit premises through their father. The documents mentioned above, which were relied upon by the Appellants, are considered in paragraph no.9 of the impugned judgment and it is rightly held that none of the documents are the documents of ownership and therefore, not useful for holding an independent right.

8. The Annexure-II relied upon by the Appellants, on close scrutiny, indicates that in the last column, it is already recorded that there is a dispute pending in the Court about the suit premises. In that view of the matter, the said entry in the Annexure-II can not be considered as conclusive proof of Appellants' independent right of ownership or otherwise. Mere possession is not sufficient in a dispute like the present one, which is under Order XXI Rule 97 to 101 of CPC,

necessarily requiring obstructionist to establish an independent right. No explanation is forthcoming as to how they were inducted in the suit premises.

9. In the aforesaid facts and circumstances, when the Appellants have not proved any independent right of ownership to the suit premises, as claimed and no documents have been shown to this Court indicating any ownership to the suit premises, no fault can be found with the impugned order.

10. There is no merit in the appeal. Hence, appeal and pending interim application are accordingly dismissed. No order as to costs.

11. At the request of learned counsel for the Appellants, operation of this order is stayed for a period of 4 weeks from today. It is however clarified that as on today, no interim/ad-interim stay/protection was granted by this Court.

12. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)