



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

**MISC. CIVIL APPLN. (REVIEW) NO.145 OF 2025
IN SA/195/2022**

Sau. Shraddha W/o Satish,
Burghate, Aged about 58 years,
Occu: Housewife and Agriculturist,
R/o. 29, Samparpan Colony,
V.M.V. Road, Amravati,
Tah. And Dist. Amravati,

....APPLICANT

VERSUS

1. Jaiprakash Mahadeoji Rinwa,
Aged about 78 years,
Occu: Service,
R/o. Satkhidi Road, Amravati,
Tah and Dist. Amravati.
2. Shri Parag Purushottam Khakare,
Aged about 50 years,
Occu: Agriculturist,
R/o. Gosavi Colony, Amravati
Tah. And Dist. Amravati.
3. Shri Thakurdas Ramchandra Zanwar,
Aged about 76 years,
Occu: Business,
R/o. Sabnura, Amravati,
Tah. And Dist. Amravati.
4. Shri Ashok Ajabrao Bhilkar,
Aged about 60 years,
Occu: Service,
R/o. Ravikiran Colony, Amravati
5. Shri Pramod S/o Ajabrao Bhilkar,
Aged about 42 years,
Occu: Nil, R/o. Ravikiran Colony, Amravati
Tah. And Dist. Amravati.

....RESPONDENTS

....

Mr. A. V. Bhide, Advocate for the applicant

Mr. A. M. Sudame, Advocate for the respondents

....
AND

**MISC. CIVIL APPLN. (REVIEW) NO.146 OF 2025
IN SA/171/2022**

1. Kalpana Ashokrao Gulhane
Aged about 55 years,
Occu: Housewife and Agriculturist
R/o. Wadgaon, Tq. & Dist. Yavatmal
2. Nilima Satishrao Gulhane,
Aged 50 years, Occu: Agriculturist &
Housewife, R/o. Vaibhav Colony,
Amravati, tq. & Dist. Amravati
3. Shobhatai Purshotam Gulhane
Aged 75 years, Occu: Agriculturist &
Housewife, R/o. Nilkanth Chowk, Budhwara
Amravati, Tq. & Dist. Amravati

....APPLICANTS

VERSUS

1. Jaiprakash Mahadeoji Rinwa,
Aged about 78 years, Occu: Service
R/o. Satkhidi Road, Amravati
Tq. & Dist. Amravati
2. Shri Parag Purushottam Khakare,
Aged about 50 years,
Occu: Agriculturist,
R/o. Gosavi Colony, Amravati
Tah. And Dist. Amravati.
3. Shri Thakurdas Ramchandra Zanwar,
Aged about 76 years,
Occu: Business,
R/o. Sabnura, Amravati,
Tah. And Dist. Amravati.
4. Shri Ashok Ajabrao Bhilkar,
Aged about 60 years,
Occu: Service,
R/o. Ravikiran Colony, Amravati

5. Shri Pramod S/o Ajabrao Bhilkar,
Aged about 42 years,
Occu: Nil, R/o. Ravikiran Colony, Amravati
Tah. And Dist. Amravati.**RESPONDENTS**

....
Mr. A. V. Bhide, Advocate for the applicants
Mr. A. M. Sudame, Advocate for the respondents
....

CORAM : SANJAY A. DESHMUKH, J.
RESERVED ON : 28.07.2025
PRONOUNCED ON : 26.09.2025

ORDER :-

1. These are the review applications under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (for short the CPC), seeking review of the common judgment passed by this Court in Second Appeal No.195 of 2022 and second appeal No. 171 of 2022, dated 17th October, 2024.

2. The brief facts of the case are that the second appeal No. 195 of 2022 was preferred against the judgment and decree passed by the learned District Judge-3, Amravati in Regular Civil Appeal No.147 of 2018 dated 14.01.2022, which arose from the dismissal of Regular Civil Suit No. 256 of 2012 dated 14.08.2018 and second appeal No. 171 of 2022 was preferred against the judgment and decree passed by the learned District

Judge-3, Amravati in Regular Civil Appeal No.207 of 2019 dated 14.01.2022, which arose from the dismissal of Regular Civil Suit No.8 of 2012 dated 14.10.2019.

3. In the suits, the appellants sought a declaration that the sale deed confirmed by the Executing Court in Special Darkhast No.2 of 1992 dated 14.09.1994 shall be deemed to be cancelled in respect of the original owner Ajabrao Bhilkar, on the ground that he had deposited the entire decretal amount in the Court with permission of Court.

4. The defendant resisted the suit by filing an application under Order VII Rule 11 of CPC, contending that there is no cause of action to file a suit and it was barred as per Order XXI Rule 97 and Section 47 of the CPC. The learned Trial Court, by an order dated 14.08.2018, rejected the plaint holding that the suit is barred in view of Order XXI Rule 92 (3) of CPC. Thereafter, the appellant filed the First Appeal which was also dismissed on the same ground. The second appeal No.195 of 2022 and 171 of 2022 filed by the appellants were dismissed by this Court on merits.

5. The learned Advocate for the applicants submitted that the provisions of Order XXI Rule 92(3) were not properly considered by this Court. He contended that though, Ajabrao Bhilkar's prayer for making

payment of installments of decretal amount was rejected, he filed Civil Revision No.6 of 1995, in which this Court granted stay and directed Ajabrao Bhilkar to deposit the decretal amount. The amount was deposited on 30.10.1996, yet the Executing Court failed to consider the same in the light of Rule 92(3).

6. He further submitted that Respondent No.1, the auction purchaser, did not take steps to obtain possession of the suit property till 2011. Although the sale was confirmed in the year 1994 and applied for warrant of possession of suit property against Ajabrao Bhilkar, subsequently, half portion of the suit property was sold to Prabhakar Burghate and the remaining half portion was sold to Shraddha Satish Burghate on 26.11.1996. Thereafter, Prabhakar Burghate sold his half portion to Kalpana Ashok Gulhane, who is also the appellant in Second Appeal No.171 of 2022. Those persons were not placed in the possession of the disputed land. Meanwhile, Ajabrao Bhilkar died on 10.09.2009. His legal representatives were brought on record in Darkhast proceeding No.2 of 1992 dated 07.12.2009 vide Exhibit-66. Neither Ajabrao Bhilkar nor his legal representatives were in possession of the said property. When the applicant came to know that the auction purchaser was trying to take possession of the suit property, the applicant filed the Regular Civil Suit

No.256 of 2012 and Regular Civil Suit No. 8 of 2012 alleging that fraud has been committed by the auction purchaser. The said suit was opposed by respondent No.1 by filing an application under Order VII Rule 11 of the Code of Civil Procedure, 1908.

7. The grounds raised in the applications are that Order XXI Rule 92(3) of the CPC was not properly considered by this Court. It is contended in paragraph 20 of the impugned judgment that this Court erred in holding that no substantial question of law arose for determination. According to the applicant, said question of law was not answered by this Court with a specific finding, it is an error, apparent on the face of the record. The observations made in paragraph 23 of the judgment of First Appellate Court were not properly considered by this Court. Therefore, the impugned judgments require review on the grounds of said errors.

8. The learned advocate for the applicants further submitted that this Court failed to consider that the suit was not barred by limitation, as the alleged fraud was disclosed in the year 2011. It is contended that the auction sale had become void due to the non-compliance with the statutory provisions of Order XXI Rules 85, 86 and 87 of the Code of Civil Procedure, 1908. Accordingly, on this ground the appeals ought to have been allowed. He further argued that Respondent No.1 did not implead the

applicants in the execution proceedings, and therefore, the applicants were not afforded an opportunity to lead evidence regarding the alleged fraud committed by the auction purchaser. The warrant of possession filed by the respondents was barred by limitation, as it was issued eight years after the disposal of the Civil Revision. Moreover, The process of attachment of the suit property was itself vitiated for non-observance of statutory principles as per the Bombay Amendment in Order 21 Rule 54 of Code of Civil Procedure. It was not considered that the auction purchaser was having constructive notice of the rights of Ajabrao Bhilkar and Prabhakar Burghate. The plea of fraud was not properly appreciated by both the Courts below.

9. The learned advocate for the respondents submitted that no valid grounds have been raised for considering the prayer of the review. He relied upon paragraph 19 of the impugned judgment, wherein this Court held that no cause of action arose for filing of the suit. It was further held that although Ajabrao Bhilkar was directed to deposit the decretal amount to show his bonafides, he deposited that amount, but he did not proceed further for the cancellation of the auction sale. He did not act as per Order XXI Rule 90 of the CPC to challenge the auction sale. The sale was confirmed on 14.09.1994 by the Executing Court and thereafter the alleged sale deed was executed on 26.07.1996. Thus, on 26.07.1996, no title of the suit property

was passed to the Prabhakar Burghate. The title of suit property was passed by confirmation of sale to the respondent. Therefore, no question of law arises for determination by this Court. Thus, all the grounds raised regarding facts are not error, apparent on the face of record to decide the review applications. Learned advocate submitted that, there is no merit in the application for review. Therefore, it deserves to be rejected.

10. Many points regarding non compliance of the provisions as per the Order XXI of CPC are raised in this application, but it must be noted that as per Section 47 of CPC, all the questions arising between parties relating to executions discharge or the satisfaction of the decree shall be determined by the Execution Court and not by the separate suit. The applicants were stepping in the shoes of judgment debtor, as he purchased the suit property during the pendency of execution proceeding. The judgment debtor did not challenge the sale-transaction and its process in the executing proceedings. That right is waived. Therefore, such suit cannot be maintainable. In the case in hand, this suit was filed regarding property of which decree was executed by the Executing Court. Therefore, as per Section 47 of CPC, the subsequent suit is barred and not maintainable.

11. During the pendency of the executing proceeding, the judgment debtor or the plaintiffs in the execution proceedings did not object

during execution proceeding. There right to objection as to sale in favour of respondent is waived by them and now the plea of fraud is raised after so many years by filing such suits. The grounds of objection for review raised in the applications are not legal grounds. All the grounds are factual grounds regarding execution proceeding. Thus, there is no any ground for review against impugned judgments.

12. The Trial court as well as First Appellate Court was correct in dismissing the suit. This Court has given sufficient reasons on the substantial questions of law which are sufficient. Therefore, the arguments of the learned advocate for the applicants are not acceptable in this regard. The application deserves to be rejected.

13. Considering the facts and circumstances of the case and the fact that the applicants have filed the present review applications without any valid ground and compelled the respondents to face the application, the respondents are entitled for the costs of Rs.10,000/-. Hence, the following Order:

ORDER

- a. The Review Applications are rejected.
- b. The applicants are directed to pay cost of Rs.10,000/-(Rs. Ten

Thousand only) to the respondents within a period of three months from the date of uploading of this order and it is not paid within the stipulated period, the applicants have to pay 9% interest on the said amount until the realization of entire amount.

[SANJAY A. DESHMUKH, J.]

HRJadhav