



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

Writ Petition No. 2924 of 2023

[Vinod Narayanrao Awandkar ..vs.. Mangala W/o Ambadas Nathe and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. S. Manohar, Advocate for the petitioner
Mr. A. J. Thakkar, Advocate for respondent nos. 1 to 3
None for respondent nos. 4 to 6

CORAM : ANIL L. PANSARE J.

DATED : 13-01-2025

Heard.

2. The petitioner is obstructionist in the execution proceedings filed by respondent nos. 1 to 3. These respondents i.e. respondent nos. 1 to 3 had filed a suit against respondent nos. 4 to 6 for partition and separate possession.

3. Respondent no. 1 is wife of respondent no. 4, respondent nos. 2 and 3 are their children. Respondent nos. 5 and 6 are the persons, who have purchased certain properties from respondent no. 4. Thus, according to respondent nos. 1 to 3 (original plaintiffs), respondent no. 4 is the person to whom the suit property belongs. According to them, he acquired the suit property under family partition.

4. The trial Court decreed the suit and accordingly preliminary decree was drawn. The respondent nos. 1 to 3 applied for final decree by requesting executing Court to appoint Court Commissioner to effect partition. The Court

Commissioner visited the suit property and found the petitioner occupying the same.

5. According to the petitioner, he had purchased the entire property from respondent nos. 4's father. When he came to know about the execution proceedings, he approached executing Court putting forth his case in the form of objection. The objection was not decided, instead was 'filed' because petitioner failed to pursue it. The trial Court has then issued directions to break open the lock for executing the decree. These orders are challenged.

6. In this connection, my attention is invited to Order 21 Rule 97 of the Code of Civil Procedure, 1908 (for short 'the Code') which reads thus :

“97. Resistance or obstruction to possession of immovable property. - (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

[(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]”

7. As could be seen, where the execution of decree is resisted or obstructed by any person in obtaining possession of the property, the decree holder may make an application to the Court complaining of such resistance or obstruction and where such an application is filed, the Court is under obligation to adjudicate the issue.

8. In the present case, it is not the decree holder, who filed such application but the obstructionist himself approached the executing Court and raised objection. As stated earlier, the objection was filed. The respondent nos. 1 to 3 had filed reply to the objection which to my mind could have been considered as application under Order 21 Rule 97 of the Code. On this point, learned counsel for the petitioner has invited my attention to the judgment passed by the coordinate Bench of this Court in the case of *Shripati Ganpati Jadhav and others Vs. Chandrakant Ganpati Jadhav and others [2011(2) Mh.L.J. 689]* where in an identical situation, the Court held that the reply filed by the decree holder to the objection raised by obstructionist can be treated as an application under Order 21 Rule 97 of the Code, for removal of the obstruction.

9. That being so and the trial Court having failed to proceed as required under Order 21 Rule 97 of the Code, the orders will not stand scrutiny of law.

10. The writ petition is accordingly allowed. (1) Order dated 24-7-2019 in Regular Darkhast No. 1/2010, (2) order dated 1-8-2019 passed by Civil Judge Junior Division, Akot below Exhibit 44 in Regular Darkhast No. 1/2010 and (3) order dated 16-3-2023 thereby observing that the objection filed by the petitioner has been dismissed and that there is no objection pending as on date are quashed and set aside.

11. The trial Court shall treat the reply filed by decree holder as application under Order 21 Rule 97 of the

Code and proceed to decide the same in accordance with law.

12. The parties shall appear before the executing Court on 28-1-2025.

13. Writ petition is disposed of in above terms with no order as to costs.

(Anil L. Pansare, J.)

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