



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

Second Appeal NO.70/2020

Vishwanath Ballapaa Nere Vs. Sau. Jyoti wd/o Mahendra Deshmukh

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

Court's or Judge's order

Mr.S.M.Vaishnav, Advocate for the appellant.
Mr.P.A.Kadu, Advocate for respondent nos.1 and 2.

CORAM : ROHIT W.JOSHI, J.
DATE : SEPTEMBER 8, 2025.

1. Heard.
2. The present appellant has suffered by a decree of eviction in a suit filed by the present respondents and their brother namely Purshottam Kashiram Deshmukh and nephew Purshottam Deshmukh. The decree for eviction has attained finality between the parties. After filing of the suit for eviction, a partition suit was filed by some of the family members of the respondents and other plaintiff, which was registered as Special Civil Suit No.117/2007. The present respondents are defendant nos.4 and 5 in the said suit for partition. Out of Court settlement was arrived at between the parties in the said partition suit in which the suit property was allotted to the share of the present respondents, who are defendant nos.4 and 5 in the suit for partition. The partition decree was passed on 23.7.2015.
3. In such circumstances, the plaintiff nos.3 and 4 filed the Execution Petition being Regular Darkhast No.23/2012. In this Execution Petition, the present petitioners, who were judgment debtors, filed an objection vide Exhibit-54 claiming that other co-owners were not parties to the Execution Petition and, therefore, the same was not maintainable. The said objection came to be rejected by learned Executing Court vide order dated 26.2.2016.

This order dated 26.2.2016 came to be challenged by the appellants-judgment debtors by filing an appeal being Regular Civil Appeal No.45/2016 which came to be dismissed vide judgment dated 25.6.2019. This judgment and decree dated 25.6.2019 and earlier order dated 26.2.2016 are subject matter of challenge in the present second appeal.

4. It is not in dispute that the respondents, who have filed Execution Petition, were co-owners of the suit property. It is also not in dispute that they were co-landlords of the suit property. The decree for eviction is passed in their favour along with their brother and nephew. Since the properties allotted to their share in partition, the respondents have put the decree to execution. No objection is raised by any family members to execution of decree. It is well settled that the co-owner can maintain the proceedings for eviction against the tenant. The learned Courts have concurrently rejected the objection raised by the appellant in view of the settled legal position.

5. Having perused the order impugned, in the considered opinion of this Court, both the learned Courts have rightly appreciated the legal position that the co-owner can maintain the proceedings against the tenant and, therefore, the Execution Petition did not suffer from any jurisdictional error. No substantial question of law, therefore, arises for consideration in the present second appeal. Second Appeal stands dismissed accordingly.

6. At this stage, Mr. Vaishnav, learned counsel for the appellant, on instructions from the appellant, who is personally present in the Court, makes a statement that the appellant shall vacate the suit property and deliver peaceful vacant possession thereof to the present respondents on or before 30th April, 2026. The statement is accepted as an undertaking to this Court.

The appellant is directed to abide by the undertaking given to this Court and to vacate the suit shop on or before 30th April, 2026.

(ROHIT W. JOSHI, J.)

Mukund Ambulkar