



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

WRIT PETITION NO.1346/2024

Omprakash S/o Santoshrao Telrande Vs. Anis S/o Jaggu Ahemad Khan

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. S.S. Shingane, Advocate for Petitioner
Mr. D.R. Bhoyar, Advocate for Respondent

CORAM: SACHIN S. DESHMUKH, J.

DATED : 31st JULY, 2025

1. After dismissal of the suit, the petitioner presented the appeal. During pendency of the said appeal, the respondent expired on 28.12.2013. Thereafter, the appeal came to be allowed, as such, it was against the dead person. Although the fact of death of defendant was well within the knowledge of the petitioner and as per the mandate of Order 22 Rule 4 of the Code of Civil Procedure, the application ought to have been presented for bringing LR's on record of the deceased defendant although who happened to be neighbour of the petitioner. Failure to take necessary steps to bring LR's of defendant, resultantly, the first appellate Court passed a decree against the dead person.

2. On the strength of the decree, the petitioner presented the execution proceedings. The present respondent claiming to be purchaser and as such stepped into the shoes of the original defendant, filed an objection under Order 21 Rule 97 of the Code of Civil Procedure.

3. The executing Court upon noting the undisputed fact of death of deceased defendant is prior to the decree rendered by the first appellate Court. Failure on the part of the petitioner to bring legal representatives of deceased defendant resulted the decree as nullity, since it is against the dead person. The decree against a dead person essentially has to be regarded as nullity. In such eventuality, the executing Court must refuse to execute it.

4. Accordingly, the executing Court taking into account the settled legal principles, has allowed the application presented by the objector.

5. Failure on the part of the petitioner to substitute the legal representatives of the deceased defendant under Order 22 of the Code of Civil Procedure, pending appeal eventually renders a subsequent decree void. Thus, the executing Court has not committed any error while passing the order under challenge, resultantly, no error could be noted and the petition is liable to be dismissed. Accordingly, the same is dismissed. No order as to costs.

(SACHIN S. DESHMUKH, J.)