



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

WRIT PETITION NO. 6175/2024

- (1a) **Smt. Maya Wd/o Kailash Bhivgade,**
Aged about 47 years, Occ. Agriculturist,
- (1b) **Ku. Ashna D/o Kailash Bhivgade,**
Aged about 20 years, Occ. Education,
- (1c) **Ku. Priya D/o Kailash Bhivgade,**
Aged about 18 years, Occ. Education,

Legal representatives of Deceased Defendant
J.D. No. Ramrao Vitthalrao Bhivgade,

All R/o. At Post Wadoda, Tahsil Kamptee,
District Nagpur

.... PETITIONER(S)

// VERSUS //

- (1) **Shri Ajay Chandrakumar Suryawanshi,**
Aged about 50 years, Occ. Business,
R/o. Shanti Nagar, Dr. Babasaheb Ambedkar
Chowk, Nagpur
- (2) **Shri Vijay S/o Vishwanathji Bawane,**
Aged about Major, Occ. Business,
R/o. Qrt. No. 67, Vinakr Vasahat,
Manewada Road, Nagpur
- (3) **Shri Motilal Chaganlal Patale,**
Aged about 60 years, Occ. Agriculturist,
R/o. Lakhani, Tah. Lakhani, C/o Wankhede,
Behind Bus Stop Lakhani, District Bhandara

.... RESPONDENT(S)

Shri P.A. Markandeywar, Advocate for the Petitioner(s)
None for the Respondents

CORAM : M.S. JAWALKAR, J.
MAY 06, 2025

ORAL JUDGMENT :-

. **RULE.** Rule made returnable forthwith. Heard learned Counsel for the Petitioners. None for the Respondents.

(2) It appears that on 20/02/2009, the Respondents – Plaintiffs filed Special Civil Suit No. 283/2009 against Ramrao Bhivgade – father-in-law of the Petitioner No. 1 and grandfather of the Petitioner Nos. 2 and 3 and also against Motilal Patle. On 23/02/2010, the Suit was proceeded ex-parte against the Petitioners - Defendants. On 10/06/2015, the said Suit for specific performance of alleged contract to sell the Suit land was decreed and the Defendants were directed to execute the Sale-Deed in favour of the Respondents. On 06/06/2016, the Decree was put to execution by filing Special Darkhast No. 91/2016. On 15/10/2017, the Application to bring on record the legal

representatives of Ramrao – Judgment Debtor No. 1 was filed by the Decree Holders which was granted. On 04/03/2024, the learned Civil Judge Senior Division, Ramtek executed the Sale-Deed of the Suit land in favour of the Respondents. On 07/05/2024, the Petitioners filed objection under Section 47 read with Order XXI Rules 97, 98 & 99 of the Civil Procedure Code, 1908. It was brought to the notice of the Court that the decree is passed against the dead person. The Respondents filed their reply to the said objection. On 05/09/2024, the Respondents filed Pursis that the decree was satisfied by the learned Civil Judge Senior Division, Ramtek, so he closed the Proceedings and did not decide the objection of the Petitioners. The said order of the learned Civil Judge Senior Division, Ramtek disposing of the Execution Proceedings as fully satisfied is under challenge in this Petition.

(3) Learned Counsel for the Petitioners submits that there is no decision on the objection raised by the Petitioners specifically when the original Defendant No. 1 died on 24/08/2010 and the decree was passed on 10/06/2013 without bringing on record any

legal representatives of Ramrao, the decree against the dead person is nullity and not executable. As such, it was the duty on the part of the learned Civil Judge Senior Division, Ramtek to decide the objection first, and thereafter, if required, close the Execution Proceedings.

(4) Learned Counsel for the Petitioners relied on the judgment of this Court in the case of **Mrs. Mangala W/o Sharad Mutha & others vs. State of Maharashtra & others, 2009(6) ALL MR 598**, wherein this Court held that the Trial Court, therefore, cannot abdicate its function of adjudicating the objections to the executability of the decree. Such objections can be dealt with under Section 47 read with Order XXI, Rule 97 of the Civil Procedure Code. The Appellants therein have also raised the objection pertaining to Order XXI, Rule 16 of the CPC. The Collector is also empowered to deal with the objections and adjudicate upon it under Section 54 of the CPC. The questions whether a person is bound by a decree or order, whether the Objectors are the legal representatives of the Judgment Debtor or of the Judgment Holder, whether the Objector is claiming

protection of his possession on the basis of his own right, title and interest in the property etc. are all the objections which are required to be decided in the Execution Proceedings itself and not by a separate Suit. Any decision on the objections under Order XXI Rule 98 of the CPC has a force of decree under Order XXI, Rule 103 of the CPC, and therefore, the Civil Court as well as the Collector were duty bound to decide the objections and the same cannot be lightly brushed aside.

(5) In view of the above judgment and considering the facts of the present matter, in my considered view, the impugned order is liable to be quashed and set aside, as it is passed without deciding the objection raised by the Petitioners, specifically when the judgment and decree is nullity in the eyes of law. It appears that before bringing on record the legal representatives, neither notices to the proposed legal representatives were sent nor their names were brought on record by seeking permission in the Special Darkhast No. 04/2023. If the objections are not decided, it would cause great prejudice to the Petitioners. As such, the

Petition succeeds and the impugned order is liable to be quashed and set aside.

(6) Hence, I proceed to pass following order:-

ORDER

(a) The Writ Petition is **allowed**.

(b) The order dated 06/09/2024 passed by the learned Civil Judge Senior Division, Ramtek on Exhibit 1 in Special Darkhast No. 04/2023 is hereby quashed and set aside.

(c) The learned Civil Judge Senior Division, Ramtek is hereby directed to decide the objection raised by the Petitioners in Special Darkhast No. 04/2023 before disposing of the Execution Proceedings, as expeditiously as possible, preferably within a period of six months.

(d) Till disposal of the objection, the possession of the Petitioners shall not be disturbed.

The Petition stands **disposed of** in the above terms.
Pending Application(s), if any, stand(s) **disposed of**.

(M.S. JAWALKAR, J.)