

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.876 OF 2024
WITH
INTERIM APPLICATION NO.15425 OF 2024**

1. Smt. Vimal Irappa Patil,
Age: 78 Years, Occu.: Household.
2. Yogesh Irappa Patil,
Age: 37 Years, Occu.: Education.
3. Shailesh Irappa Patil,
Age: 33 Years, Occu.: Education,
All Nos.1 to 3 R/o. Kore-Ves,
Barshi, Taluka : Barshi,
District: Solapur.
4. Jaymangala Chanbasappa Ligade,
Age: 73 Years, Occu.: Household,
R/o.M.S.E.B. RCF Road,
Chembur, Mumbai – 400 074.Appellants

Vs.

1. Sunil Radheshyam Bharadiya,
Age: 52 Yars, Occu.: Business,
& Agri. R/o. Subhash Nagar,
Taluka : Barshi, District: Solapur.
2. M/s. Baldava & Co.,
Registered partnership firm,
Notice to be served on
Mahesh Ramakant Baldava,
Age: 50 Years, Occu.: Kerosane,
R/o. 471, West Mangalwar Peth,
Solapur.Respondents

**WITH
INTERIM APPLICATION NO.10983 OF 2025
IN
APPEAL FROM ORDER NO.876 OF 2024**

Sunil Radheshyam Bharadiya,
Age: 52 Yars, Occu.: Business,
& Agri. R/o. Subhash Nagar,
Taluka : Barshi, District: Solapur.

.....Applicant.

In the Matter in Between:

1. Smt. Vimal Irappa Patil,
Age: 78 Years, Occu.: Household.
2. Yogesh Irappa Patil,
Age: 37 Years, Occu.: Education.
3. Shailesh Irappa Patil,
Age: 33 Years, Occu.: Education,
All Nos.1 to 3 R/o. Kore-Ves,
Barshi, Taluka : Barshi,
District: Solapur.

4. Jaymangala Chanbasappa Ligade,
Age: 73 Years, Occu.: Household,
R/o.M.S.E.B. RCF Road,
Chembur, Mumbai – 400 074.

.....Appellants

Vs.

1. Sunil Radheshyam Bharadiya,
Age: 52 Yars, Occu.: Business,
& Agri. R/o. Subhash Nagar,
Taluka : Barshi, District: Solapur.
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Notice to be served on
Mahesh Ramakant Baldava,
Age: 50 Years, Occu.: Kerosane,
R/o. 471, West Mangalwar Peth,
Solapur.

.....Respondents

Mr. Balaji P. Shinde, for the Appellants.

Mr. I. M. Khairdi with Mr. Bhushan Walimbe, for the Respondent No.1.

CORAM : MRS. VRUSHALI V. JOSHI, J.

RESERVED ON: 22nd JANUARY 2026

PRONOUNCED ON : 30th JANUARY 2026.

JUDGMENT :-

1. The Appellants being aggrieved and dissatisfied by the Judgment and Decree passed by the District Judge-1, Barshi in Regular Civil Appeal No.93 of 2024, thereby quashing and setting aside order dated 5th August 2024 passed by Civil Judge, Junior Division, Barshi below Exhibit No.135 in Regular Darkhast No.25 of 2010, have filed this appeal from order.

2. After hearing the parties, this Court on 24th March 2025 has framed the following substantial questions of law:

(i) Whether the application filed by respondent no.1 would fall within the parameters of Order XXI Rule 97 of the Code of Civil Procedure, 1908 ("CPC") or Section 47 of the CPC ?

(ii) Whether the application filed by respondent no.1 can be decided based on the rival pleadings and would not warrant a detailed inquiry or collection of evidence ?

*(iii) Whether rejection of respondent no. 1's application by the Executing Court would fall within the parameters of the legal principles settled by the Hon'ble Apex Court in the case of **Silverline Forum Pvt. Ltd. Vs. Rajiv Trust & Anr.**¹?*

3. The notices were issued after framing of these substantial questions of law and the parties appeared before this Court.

4. The suit was filed for possession of the suit premises by the Appellants with mesne profits on the ground of unauthorized transfer of tenancy, non-user, *bona fide* personal use and occupation and hardship, which was decreed in the year 2010 on the ground of non-user and *bona fide* use as well as hardship and granted arrears of rent, which was confirmed by the Appellate Court on the same grounds. The appeal filed by the defendants i.e., Applicants in Civil Revision Application before this Court was dismissed and the Hon'ble Apex Court has confirmed the order passed by this Court.

5. In execution proceeding, the Objector – Mr. Sunil Radheshyam Bharadiya, who is the son of Defendant No.8-Mr. Radheshyam Ramdayal Bharadiya, who is the Judgment Debtor, has raised an objection vide Exhibit No.135 under Order 21 Rule 97 of the Code of

¹ (1998) 3 SCC 723.

Civil Procedure claiming his right on the basis of oral agreement dated 15th August 2019 that Appellants have orally agreed to sell said property to the Objector on oral terms & conditions that if the judgment is passed in favour of the Appellants, the 20% less amount of the market value will be paid by the Respondents and if he wins, then 50% less amount of the market value will be paid by them. On the said oral agreement, he has carried out the construction to the tune of Rs.8,00,000/- and hence raised objection under Order 21 Rule 97.

6. After considering the record of entire litigation between the parties, the Executing Court has rejected the application by passing the order below Exhibit No.135 on the ground that there is no supportive registered document and there are no merits in the objection. The said order was challenged by the Objector in the Appellate Court by filing Regular Civil Appeal No.93 of 2024. The Appellate Court has remanded back the matter to the Executing Court with direction to decide it after recording the evidence within a period of three months. It is observed by the Appellate Court that objection can be raised by any person and the object is to curtail the

litigation. Since objection is raised under Order 21 Rule 97 read with Sections 47 and 151 of the Code of Civil Procedure, the objection decided is to be treated as decree. The Executing Court ought to have framed the issues and ought to have given opportunity to lead evidence, but since this has not happened, the order of the trial Court dated 5th August 2024 is set aside and it was remanded back.

7. The counsel for Appellants has stated that only to harass and delay the possession, this objection was raised. As per the panchanama, property was in possession of Kamlesh Hedda. The Judgment Debtor has inducted his relative and Objector was not in possession of property. Therefore, Sunil Radheshyam Bharadiya cannot raise objection as he was not in possession. As the reasoned order is passed after hearing both the parties and considering facts on record, prayed to reject the application.

8. The counsel for Respondents has stated that as per Order 21 Rule 97 of CPC, the third person has right to object, who is in possession of the suit property. The opportunity was not given to the objector to prove his case. It should be treated like civil suit and the

opportunity must be given to the plaintiff to prove his pleadings. As per the Objector, there was oral agreement between the Decree Holder and the Objector. He has spent Rs.8,00,000/- on the oral agreement made by the Judgment Debtor. Therefore, said oral agreement is required to be proved and therefore, the Appellate Court has rightly remanded back the matter to decide it by considering the evidence and therefore, prayed to reject the appeal filed by the Appellants.

9. Heard learned counsel appearing for both the parties.

10. The litigation is about the tenancy between the Appellants and the father of Respondent No.1 and one Baldava & Co. The Appellants have won the battle up to the Supreme Court. Though all the orders are in favour of the Appellants, they are deprived of their right to enjoy their property. On perusal of checkered history of litigation, it appears that, the Respondent No.1 herein is son of Defendant No.8 and has inducted himself on the place of Objector, and built up a story of oral agreement of purchase of property. It appears that vague statements about the agreement and conditions are made. The prudent person will not believe on such a story narrated by

respondent only to induct himself as a third person to fit himself under the provisions of Order 21 Rule 97, he has built up a story and also mentioned names of some of the persons, he has made the statement that everything was agreed orally and also mentioned the conditions.

11. No doubt as per the Contract Act, oral agreement is admissible, however it is required to first consider whether the appeal filed by the Objector fall within the parameter of Order 21 Rule 97. Order 21 Rule 97 reads as 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. 6 [(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.]”

Firstly it is necessary to scrutinize whether the Appellant is third person and is in possession of suit property.

12. The appellants have filed suit for injunction bearing No.116 of 2021 against the Objector along with his father. Objector has filed his separate written statement to said suit and denied about construction on suit property. The Objector is son of Radheshyam Bharadiya who is one of the Judgment Debtors. As per Rule 97, third person can raise objection. He is son of Judgment Debtor and if he is in possession of suit property in that capacity then he can not raise said objection. On perusal of written statement, he has denied about construction and repairs in suit property, therefore, now he can not come with a story that he carried out repairs and spent Rs. 8,00,000/- on it. His written statement falsify the story built up by him for raising objection. Moreover, it is brought to the notice of this Court that panchanama report in R.D. 25 of 2010 conducted at the time of possession warrant clearly shows that Mr. Hedda was in possession and Respondent was not in possession of suit property. Therefore, as per Order 21 Rule 97, the objector who is not in possession of suit property, is son of Judgment Debtor and has denied the possession in written statement has no right to raise the objection.

13. Appellants filed a suit for injunction against the Respondents not to construct anything in the suit premises. The Respondent No.1 has filed the written statement and has not made single whisper about said agreement. On the contrary, in his written statement, he has stated that he was not staying in the suit property. Due to COVID, he was away from the said property. He has denied all the contentions that he has carried out any construction over the suit property. Now he is coming before the Executing Court that with the permission, he has carried out the construction and has spent Rs.8,00,000/- and there is oral agreement. The record shows that he has denied any construction carried out by him and now is coming with the same in objection. Hence, story of construction with permission can not be believed. The Executing Court has rightly observed that the statement made by objector is not supported along with any document, there is no need to prove the statement made by the Objector.

14. It appears from the record that to prolong the matter and to delay the delivery of possession and effect to the decree, the objection is raised. Though as per Rule 97 of Order 21 of the CPC, the objection can be raised, appellant is not the person who is in

possession of the suit property. The Hon'ble Apex Court in the case of *Silverline Forum Pvt. Ltd. (supra)*, in paragraph No.14, has observed as under:

“14. It is clear that the executing court can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. The court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary.”

15. As it is specifically observed by the Apex Court that the Executing Court can make adjudication on the admitted facts or even on the averments made by the Resister, it is not mandatory to lead the evidence, as it can be decided. It is the discretion of the Court whether to permit to lead the evidence or not. After considering the facts on record, the trial Court has rightly rejected the objection raised by the Objector. Hence, the order passed by the Appellate Court remanding back the appeal needs to be set aside.

16. The Appeal is allowed.

17. The Judgment and Decree passed by the District Judge-1, Barshi in Regular Civil Appeal No.93 of 2024 is set aside and order dated 5th August 2024 passed by Civil Judge, Junior Division, Barshi below Exhibit No.135 in Regular Darkhast No.25 of 2010 is confirmed.

18. In view of disposal of Appeal, the Interim Applications pending therein shall also stand disposed of.

(MRS. VRUSHALI V. JOSHI, J.)

19. Today, I pronounced the judgment in open Court. When it is pronounced that the decree passed by the District Judge-1, Barshi, in Regular Civil Appeal No. 93 of 2024 is set aside and that the order dated 5th August 2024 passed by the Civil Judge, Junior Division, Barshi, below Exhibit No.135 in Regular Darkhast No. 25 of 2010 is confirmed, the learned counsel appearing for the Respondents prayed to modify the Judgment. He has placed reliance on the Judgment of the Hon'ble Apex Court in the case of **P E.**

***Prasannakumari & Ors. v. T. K. Ambujakshi (Dead) Through LRs,*²**

and prayed to remand the matter back to the Appellate Court for decision on merits, instead of confirming the order passed by the Executing Court.

20. The learned counsel appearing for the respondent further submitted that the Appellate Court had remanded the matter to the Executing Court for decision after permitting the parties to lead evidence, and that the matter was not decided on merits by the Appellate Court. It was, therefore, contended that the respondent ought not to be deprived of the statutory remedy of first appeal. On these grounds, the respondent prayed that the matter be remanded to the Appellate Court instead of confirming the order passed by the Executing Court.

21. I have carefully gone through the judgment passed by the Hon'ble Apex Court. The matter before the Hon'ble Apex Court was a Regular Appeal, wherein the High Court had set aside the order. The Hon'ble Apex Court observed that the error committed by the High Court was in not framing substantial questions of law, though it is

² Civil Appeal No.4357 of 20224 dtd. 18th March 2024.

well settled that an appeal arising from an “Order under Clause (u) of Rule 1 of Order XLIII of the Code of Civil Procedure is governed by the principles laid down under Section 100 of the Code of Civil Procedure”.

22. In the case in hand, the substantial questions of law are framed. This is a case where since 2010 the decree has been passed in favour of the Appellant and the Appellant has won the battle up to the Apex Court. When the execution proceedings were started, the objection was raised that this Court has considered it on merits before the Appellate Court. The Appeal was filed only because the opportunity to lead evidence was not granted to Respondents. As I have framed the substantial questions of law and observed that the Appellant cannot object the proceeding under Order 21 Rule 97, there is no question of remanding back the matter to the Appellate Court and to allow the Appellant to initiate the second round of litigation. Hence, prayer made by the Respondents is rejected.

(MRS. VRUSHALI V. JOSHI, J.)