

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL (ST) NO. 1987 OF 2026
WITH
INTERIM APPLICATION NO. 623 OF 2026

Pushpa Sayaji Gaikwad	..Appellant
Versus	
Nirmala Pandurang Gaikwad	...Respondent

Mr. S.C. Wakankar, for the Appellant.
Adv Yojana Gandhi, for the Respondent.

CORAM: N. J. JAMADAR, J.
DATE : 28th JANUARY 2026

ORDER:

1. This Second Appeal is directed against a judgment and order dated 20th December 2025 passed by the learned District Judge, Pune, in Civil Appeal No. 131 of 2025, whereby the Appeal preferred by the Appellant-original Judgment Debtor against a judgment and order dated 21st March 2025, passed by the executing Court in RD No. 219 of 2014, came to be dismissed.

2. The Appellant was the original Defendant in RCS No. 4936 of 2012. The Respondent had instituted the said Suit for removal of encroachment and recovery of clear and vacant possession of 22 Are land out of Survey No. 49, Mouje Theur, Taluka Haveli, District Pune.

The said suit proceeded without written statement and, by a judgment dated 10th June 2014, the learned Civil Judge passed a decree for removal of encroachment and delivery of possession of 22 R land by the Appellant-Defendant to the Plaintiff. Damages of Rs.40,000/- were also awarded.

3. The Appellant preferred an Appeal alongwith an Application for condonation of delay. The said Application was dismissed by the District Court. In Second Appeal as well, the said order was affirmed by the High Court. A challenge thereto before the Supreme Court did not yield any success.

4. The Respondent-Decree Holder filed an Execution Petition. The Petitioner preferred an Application under Order 21 Rule 97 of the Code of Civil Procedure 1908 (“the Code”) raising obstruction to the execution of decree on the ground that there were sheds over the suit property and, by making false assertions that the suit property was vacant land, the Respondent had obtained a decree. Thus, the decree which was obtained by gross suppression of facts and practicing fraud was void-ab-initio. It was, further contended that the relief in the said suit itself was barred by law of limitation.

5. By an order dated 21st March 2025, the learned Civil Judge was persuaded to reject the Application observing, *inter alia*, that the executing Court cannot go behind the decree and examine whether the

decree was obtained by gross suppression of facts and, the suit was barred by law of Limitation.

6. In the Appeal, the learned District Court concurred with the view of the executing Court. It was *inter alia* observed that the Appellant-Defendant could have raised all the grounds, which were sought to be urged before the executing Court, in the suit in which decree was passed. The learned District Judge was of the view that in each and every case of obstruction to the execution, a detailed enquiry or opportunity to lead evidence was not warranted. The present case was of such a nature where recording of evidence was not called for to decide the resistance to execution.

7. Being aggrieved, the Appellant has preferred this Appeal.

8. Heard Mr. S.C. Wakankar, the learned Counsel for the Appellant and Ms. Yojana Gandhi, the learned Counsel for the Respondent.

9. Mr. Wakankar submitted that the executing Court and the Appellate Court were clearly in error in not deciding the obstruction to the execution, in accordance with the provisions contained in Order XXI Rule 97, 101 and 103 of the Code. Even a Judgment Debtor is entitled to raise obstruction to the execution of decree. A resistance to the execution of decree is required to be adjudicated like a suit.

10. To buttress this submission, Mr Wakankar placed reliance on the judgment of the Supreme Court in the case of **Brahmdeo Chaudhary Vs Rishikesh Prasad Jaiswal**.¹

11. The refusal on the part of the trial Court and the appellate Court to decide the obstruction proceedings by permitting the Appellant to adduce evidence gives rise to a substantial question of law, submitted Mr. Wakankar.

12. I find it rather difficult to accede to the submissions on behalf of the Appellant.

13. Firstly, the executing Court and the appellate Court were justified in not entertaining the obstruction to the executability of the decree on the ground that the said decree was obtained by suppressing material facts, and, the suit in which the decree was passed was barred by law of limitation. Those issues, at best, pertain to the legality of the decree and do not render the decree a nullity. (**Ittyavira Mathai Vs Varkey Varkey and Anr**² and **Vasudev Dhanjibhai Modi Vs Rajabhai Abdul Rehman and Ors**³).

14. Secondly, the submission on behalf of the Appellant that the decree is not executable for it was passed in respect of an open land cannot be accepted unreservedly. From the bare perusal of the decree in

1 (1997) 3 SCC 694.

2 AIR 1964 SC 907.

3 1970 (1) SCC 670.

RCS No. 4936 of 2012, it becomes evidently clear that the decree directed delivery of clear and vacant possession of 22 R land over which the Defendant had committed encroachment. Thus, the broad submission that the decree cannot be executed in the present form as there are sheds on the suit property cannot be readily acceded to.

15. In the case of **Brahmdeo Choudhary(Supra)** the Supreme Court after following the previous pronouncement in the case of **Bhanwari Lal Vs Satyanarain & Anr⁴** enunciated that the provisions of Order XXI lay down a complete Code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the Executing Court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order XXI Rule 97 sub-rule (1) and he cannot bypass such obstruction and insist on re- issuance of warrant for possession under Order XXI Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order XXI Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the record of the Executing Court it is difficult to appreciate how the Executing Court can tell such obstructionist that he

⁴ (1995) 1 SCC 6.

must first lose possession and then only his remedy is to move an application under Order XXI Rule 99 CPC and pray for restoration of possession.

16. It is true in view of the provisions contained in sub-Rule (2) of Rule 97 where an application is made under sub-Rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions contained in the Code, and under Rule 103 of Order 21 of the Code, where any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same condition as to an Appeal or otherwise as if it were a decree.

17. These provisions, however, do not imply that in each and every case, it is incumbent to record the evidence to determine the obstruction. In the case of **Silverline Forum Pvt Ltd Vs Rajiv Trust And Anr**,⁵ a three Judge Bench of the Supreme Court enunciated that the words, “all questions arising between the parties to a proceeding on an application under Rule 97” would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the obstructionist raised it. The executing Court can decide whether the resister or obstructionist is a person bound by the decree and he refused to vacate the property. That question squarely falls within the

⁵ (1998) 3 SCC 723.

adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication enumerated 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 resister. Of course the Court can direct the parties to adduce evidence for such determination, if the Court deems it necessary.

18. In the case of **Rahul S Shah Vs Jinendra Kumar Gandhi & Ors**,⁶ another three Judge Bench of the Supreme Court, after highlighting the travails of the decree holder in not being able to enjoy fruits of litigation on account of inordinate delay caused during the process of execution of decree, emphasized that the claims under Order 21 Rule 97 or Rule 99 must be dealt strictly and be considered/entertained rarely.

19. The Supreme Court issued mandatory directions to all the Courts in dealing with the execution proceedings. The directions in Clauses 10, 11 and 12 are material and hence extracted below:

“42.

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... ..

10. The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such

6 AIR 2021 SC 2161.

issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

11. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

12. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.”

(emphasis supplied)

20. In the aforesaid view of the matter, the executing Court and the appellate Court, in the context of the nature of the resistance put-forth by the Appellant, were justified in determining the obstruction without giving an opportunity to adduce evidence.

21. Thus, in the facts of the case at hand, no substantial question of law arises for determination.

22. Hence, the following order:

: O R D E R :

(i) The Appeal stands dismissed.

(ii) In view of the dismissal of the
Second Appeal, Interim Application also
stands disposed.

[N. J. JAMADAR, J.]