



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

SECOND APPEAL NO.303/2024

Dobinagar Cooperative (Tenant Co-partnership) Housing Society Ltd., Nagpur
Through its President Shri Aslam Nasir Sheikh

...Versus...

Shri Banwarilal S/o Kedarmalji Jejani and another

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

Court's or Judge's orders

Mr. P.S. Tidke, Advocate for appellant
 Mr. N.R. Jambhulkar, Advocate for respondent No.1
 Mr. S.S. Gawali, Advocate h/f Mr. S.S. Sitani, Advocate for respondent No.2

CORAM : ROHIT W. JOSHI, J.

DATE : 03/02/2026

1. Present appeal arises out of proceedings initiated by the appellant under Order XXI Rule 97 r/w Rule 101 of the Code of Civil Procedure. The appellant is a Cooperative Housing Society. The appellant had allotted the suit plot to one Mr. Santosh Khante vide registered agreement of sale dated 12/12/1983. Under this agreement, possession of the suit property was delivered to Mr. Khante and he was permitted to make construction over the suit plot in terms of the agreement. Mr. Khante has thereafter sold the suit property to one Gajanan Nasare (defendant No.2), who, in turn, had entered into agreement of sale with respect to the suit property with the plaintiff. The suit filed by the plaintiff for specific performance of contract being Regular Civil Suit No.1026/1989 came to be decreed. The decree for specific performance, passed by the learned Trial Court is confirmed up to this Court.

2. In view of the decree for specific performance, the plaintiff initiated execution proceedings, which came to be registered as Regular Darkhast No.155/2001. The present appellant raised an objection in the execution proceedings under Order XXI Rule 97 r/w Rule 101 of the Code of Civil Procedure. The said provision stipulates that a person whose possession is likely to be taken or is taken in an execution proceedings, to which he is not a party, can raise an objection to delivery of possession. In the case at hand, it is clear that possession of the suit property was delivered by the appellant/Society to Mr. Khante under the registered agreement of sale dated 12/12/1983.

3. Perusal of order passed by the learned Executing Court rejecting the objection clearly demonstrates that the President of the appellant has unequivocally admitted in cross-examination that the appellant was not in possession of the suit property.

4. The contention of Mr. Tidke, learned Advocate for the appellant is that the agreement of sale dated 12/12/1983 does not amount to transfer of property. He contends that since the property was not transferred by the Society further alienation thereof is illegal.

5. The said objection cannot be entertained having regard to scope of an objection under Order XXI Rule 97 of the Code of Civil Procedure. Objection under the said provision can be raised only to delivery of possession. Since possession is undisputedly delivered by the appellant-Society to Mr. Khante from whom the defendant No.2 purchased the suit property, in the considered opinion of this Court, the learned Courts have

not committed any error in rejecting the objection filed by the appellant. No substantial question of law arises for consideration in the appeal. Second Appeal is, therefore, dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)

Wadkar