

## Navneet S/o Ramchandra Totla Vs Patil Patwari Saray Sansthan, Amravati Through Trustee Bhaskarrao Alias Babanrao S. Dhote (Patil)

**Court:** Bombay High Court (Nagpur Bench)

**Date of Decision:** Jan. 7, 2025

**Acts Referred:** Code of Civil Procedure, 1908 " Section 47, Order 21 Rule 97, Order 21 Rule 98, Order 21 Rule 99, Order 21 Rule 100, Order 21 Rule 101, Order 26 Rule 9

**Hon'ble Judges:** Abhay J. Mantri, J

**Bench:** Single Bench

**Advocate:** C.B. Dharmadhikari, T.S. Dadhe

**Final Decision:** Dismissed

### Judgement

Abhay J. Mantri, J

1. Heard. RULE. Heard finally with the consent of the learned Counsel for the parties.

2. The petitioner is aggrieved by the order dated 18-04-2019 passed by the learned Civil Judge, Junior Division (for short- "CJD") Morshi, below

Exhibits 42 and 55 in RD. No. 47/2013, thereby rejecting the objection (Exhibit No.42), and the application for appointment of the commissioner

(Exhibit No.55) filed by the petitioner has preferred this petition.

3. In brief, the facts are as under:

(a) The respondent/original plaintiff filed suit against the tenant, Devidas Sheshrao Umale, for recovery of possession of the suit plot and arrears of

rent. The suit was proceeded ex parte, and accordingly, on 01-01-2013, ex parte decree was passed.

(b) Pursuant to the decree, the respondent had filed execution proceedings before the learned Trial Court. During the pendency of the said execution

proceedings, on 23-12-2016, the petitioner/objector moved an application under Section 47 of the Civil Procedure Code (for short, "CPC"),

thereby seeking the relief to quash and set aside the ex parte decree passed on 01-01-2013 in Regular Civil Suit No.74/2012 as well as declare that the

said ex parte decree was obtained by fraud by the respondent and, therefore, same is not binding on him.

(c) Similarly, the petitioner moved an application under Order XXVI Rule 9 of the CPC to appoint the court commissioner to inspect the property in

question. The respondent resisted both applications. After hearing both parties, the trial Court rejected both applications by a common order, holding

that the petitioner was neither a party to the suit nor a representative of either of the parties to the suit. Therefore, he cannot take objection to the

execution of the decree, and hence, filing the objection under Section 47 of the CPC is not tenable.

Being aggrieved by the same, the petitioner/original objector/third party has preferred this petition.

4. Mr. C.B. Dharmadhikari, learned Counsel for the petitioner, vehemently contended that since 1998, the petitioner has been in possession of the suit

property as a tenant. However, the respondent has not issued any receipt for the payment of the rent to him; so also, the respondent has not made the

petitioner a party to the suit when the petitioner has been in possession of the suit property. Therefore, he submitted that by playing fraud by the

respondent and the judgment-debtor upon the Court, the ex parte decree was obtained. Hence, the petitioner intends to object to challenge the ex parte

decree.

5. He further pointed out paragraph No.10 of the impugned order and contended that the trial Court had not considered the ratio laid down in the

judgment cited before it and erred in observing that the facts in the cited judgment are different than the case at hand and, therefore, the said findings

cannot be sustained in the eyes of the law. Per contra, the petitioner possesses the suit property and, thus, is entitled to raise an objection. Hence, he

submitted that the said findings are liable to be set aside.

6. He further canvassed that the nomenclature of the section in the application would not affect the rights of the petitioner to object to the decree.

Hence, he submitted that the passing of the order is contrary to the facts on record.

7. To buttress his submission, he has relied on the judgments of the Hon'ble Apex Court in the cases of Shreenath and Ors. v. Rajesh and Ors.

reported in AIR 1998 SC 1827 and Asgar and Ors. v. Mohan Varma and Ors. reported in 2019(133) ALR 736. He has drawn my attention to

paragraphs Nos.5 and 12 in the case of Shreenath and submitted that in view of the dictum laid down in both the judgments, the petitioner, being the

possessor and tenant of the suit plot, is entitled to object to the decree in execution proceedings. However, the Trial Court has not considered the same

and erred in holding that the facts in the said judgment are different than the case at hand. Therefore, he has submitted that the petitioner, being the

possessor and claiming independent right as a tenant, is entitled to object to the said decree and, therefore, he urged for setting aside the impugned

order by allowing the objection (Exhibit 42) and application for appointment of the court commissioner to inspect the suit property (Exhibit No.55).

8. On the other hand, Mr. T.S. Dadhe, learned Counsel for the respondent, strenuously argued that the trial Court, after considering the facts and

circumstances of the case as well as the provisions under Section 47 of the CPC, has rightly held that the petitioner has no concern with the

tenant/judgment-debtor and, therefore, has no right to file an application as an objector. He further argued that the petitioner himself admitted that he

was neither a party to the suit nor a representative of either of the parties to the suit. Therefore, the findings recorded by the trial court in that regard

are just and proper, and he urged for the dismissal of the petition.

9. I have appreciated the rival contentions of the learned counsel for the parties, perused the impugned order, and record and judgments relied upon by

the learned Counsel for the petitioner.

10. It is not disputed that the respondent is the owner/landlord of the suit property. It is also not in dispute that the petitioner was not a party to the suit

bearing Regular Civil Suit No.74/2012, and also, he is not a legal representative of the parties to the suit.

11. It reveals that the petitioner filed an objection (Exhibit No.42) under Section 47 of the CPC in the execution proceedings. In paragraph No.4 of the

application, he categorically stated that one late Devidas Sheshrao Umale was the original tenant of the suit property. He was running a fertilizer shop

under the name and style of "Maharashtra Agro Centre" at the said open plot. He closed his business in 1997-98 and handed over the possession

to the decree-holder/respondent.

12. It is further contended that in 1998, the respondent handed over the possession of the suit property to the petitioner. Also, the respondent accepted

the rent from him but did not issue the rent receipt, though he demanded it several times. The said averments itself show that the petitioner himself

admitted that one late Devidas Sheshrao Umale was the original tenant in the suit property. Though he has claimed that in 1998, the respondent

handed over the possession of the suit property to him, he has not produced any document in that regard on record; so also, he has not produced any

tenancy agreement or rent receipt on record. Thus, prima facie failed to show that the respondent inducted him as a tenant of the suit premises.

13. The petitioner only claims that he was handed over the possession of the suit property in 1998 and, therefore, is entitled to object to the decree

under Section 47 of the CPC. Thus, the short question arises before the court is that,

"whether the third party in possession of the property can claim independent right, who was not a party to a decree under execution nor

a representative of the parties to the suit, could object to such decree by seeking adjudication of his objection under Section 47 of the

CPC?

14. To ascertain the said controversy, it would be appropriate to reproduce Section 47 of the Civil Procedure Code, which reads as under :

“47. Questions to be determined by the Court executing decree

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or

satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit.

(2) \*\*\*

(3) Where a question arises as to whether any person is or is not the representative of a party, such a question shall, for the purposes of this section, be determined

by the Court.

Explanation I.- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to

the suit.

Explanation II.-(a) for the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the

decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the

execution, discharge or satisfaction of the decree within the meaning of this section.

15. A bare perusal of provisions of Section 47 of CPC reveals that all questions arising between the parties to the suit in which the decree was

passed, or their representative, and relating to the execution can only raise the objection in the execution of the decree and as per Clause (3), it

is necessary to determine that the person who raises objection to the execution of the decree is or is not representative of a party. In the case at hand,

undisputedly, the petitioner was neither party to the suit nor purchaser or representative of the parties to the decree. Therefore, it cannot be said that

he is entitled to file the application under Section 47 of the CPC. Explanations I and II of said section clarify that the parties to the suit were

purchasers of the property at a sale in execution of a decree and shall be deemed to be party to the suit. Undisputedly, in the case at hand, the

petitioner is not claiming himself as a party to the suit or legal representative of the parties or purchaser of the property from the decree-holder. Thus,

the petitioner has failed to demonstrate that he is entitled to file the application under Section 47 of the CPC.

16. Perused the judgment in the case of Shreenath (supra), wherein the facts were that the plaintiff filed the suit for redemption of the mortgage

against the defendant, which was decreed. During execution proceedings, the objector moved an application contending that since 1952, he was a

tenant in the suit property, and without making him a party to the suit, the order was passed. Therefore, the Hon'ble Apex Court held that “the

right of a tenant or any person claiming right on his own of the property in case he resists his objection under Order XXI Rule 97 of the

CPC has to be decided by the executing Court itself.

Similarly, in the case of Asgar (supra), the facts were that in 1897, the disputed property was leasehold, and by efflux of time, the lease

expired in 1972, but still, the lessee was in possession of the suit property. In the said matter, the plaintiff therein filed the suit for partition and

separate possession of the property which came to be decreed and during the execution proceedings, the objector, i.e. the lessee, has raised the

objection and, therefore, the Hon'ble Apex Court held that "the said objection has to be determined under Order XXI Rule 97 of the

CPC.

17. In the case at hand, the plaintiff is not claiming that he was a party to the suit or the legal representative of the original defendant/tenant. However,

he admitted that initially, the suit property was given to the defendant, Devidas Sheshrao Umale. He closed his business and handed over the

possession of the suit property to the defendant. Subsequently, the decree-holder/respondent handed over the possession of the suit property and

accepted the rent from him but did not issue any rent receipt in that regard. By the said pleading, the petitioner tried to claim himself as a tenant in the

suit property. However, along with the application, the plaintiff failed to produce a single document on record supporting his claim. He has not

produced any document on record showing that the original tenant surrendered his tenancy rights in favour of the landlord/respondent or that the

respondent inducted him into the suit property as a tenant. To claim tenancy rights, he can file separate proceedings.

18. It is a settled position of law that the tenancy can be terminated by (i) the tenant surrendering the tenancy rights and (ii) determining the tenancy

by the competent court of law. In the case at hand, the petitioner failed to demonstrate that the tenancy of the original tenant, Devidas Sheshrao

Umale, was terminated by the above two modes prior to the passing of the decree nor produce any documents to indicate that he was inducted as a

tenant and, therefore, does not find any substance in his contention that the respondent inducted him as a tenant in the suit property in the absence of

any document in that regard. Thus, it is evident that the petitioner failed to show that he was a party to the suit or he was a legal representative of the

parties to the suit, or the respondent inducted him as a tenant in the suit property and, therefore, it seems that the facts at the case in hand are

different than the afore-cited judgments and the learned trial Court has rightly considered the same and held that the law laid down in the said

authorities do not apply to the case at hand but the observations made in Diksha Hinduja are applicable. Thus, the petitioner failed to show that he is

entitled to object to the execution decree under Section 47 of the CPC. Therefore, in my opinion, the findings recorded by the trial Court are just, legal,

and proper, and no interference is required in the writ jurisdiction.

19. Besides, the petitioner, by filing the application (Exhibit No.42), had claimed to quash and set aside the ex parte decree passed on 01-01-2013 in

Regular Civil Suit No.74/2012, which cannot be termed as an objection to the execution of the decree. Moreover, as per Order XXI Rules 97 to 101 of

the CPC, whether any decree is resisted or obstructed by any person in obtaining the possession of the suit property, in such circumstances, the

decree-holder or the purchaser of such property sold in execution of the decree, can take recourse to remove such obstruction and in that eventuality,

the court is required to adjudicate the said application. In the case at hand, the decree-holder has not filed any application complaining about the

objector's resistance to the execution proceedings. However, the petitioner claims that he was inducted as a tenant in the Suit property. Therefore, I

do not find substance in the contention of the learned Counsel for the petitioner that the trial Court has erred in passing the impugned order. On the

contrary, it seems that, after considering the rival contentions of the parties and discussing the same in detail, it passes the well-reasoned order.

Consequently, the impugned order is just and proper and no interference is required in writ jurisdiction.

20. In the aforesaid backdrop, I do not find any substance in the contentions of the petitioner in that regard, and the petition, being bereft of any merit,

is dismissed. No order as to costs. As a sequel, interim relief granted on 30-07-2019 is hereby vacated.

Inform the trial Court accordingly.