# Trilokchand Kapoorchand Vs Basubai Vastimal Oswal and Others

**Court:** Bombay High Court

**Date of Decision:** March 20, 1982

**Acts Referred:** Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 â€" Section 13
Civil Procedure Code Amendment Act, 1976 â€" Order 9 Rule 11, 151, 2(2)
Civil Procedure Code, 1908 (CPC) â€" Section 47(2)
Constitution of India, 1950 â€" Article 133(3), 227

**Citation:** AIR 1983 Bom 12 : (1983) 1 BomCR 124

**Hon'ble Judges:** Sharad Manohar, J

**Bench:** Single Bench

**Advocate:** V.P. Walawalkar, for the Appellant; C.A. Kaveria and A.C. Agarwal, for the Respondent

## Judgement

@JUDGMENTTAG-ORDER

1. An extremely interesting and somewhat ticklish question has arisen in this petition which is filed by the original decree-holder who has obtained a

decree against one of his joint tenants by compromise and the said decree has been set at naught by the Court during the execution proceedings on

the ground that the decree was inexecutable on account of various reasons. I will presently allude to those various reasons.

2. The facts of the case are as follows :--

The petitioner in these proceedings is the owner of the suit premises. At this stage at least, there is no dispute that the suit premises were let out by

him jointly to two persons -- one Vastimal and other Kapoorchand. It needs to be emphasised that it was a joint lease. Before the suit in question

was filed Kapoorchand had died and hence will be presently made his heirs and legal representatives were impleaded as defendant Nos. 2 to 9. It

may be mentioned here further that even Vastimal had died during the pendency of this litigation. However for the sake of convenience Vastimal

and his heirs will be referred to compendiously, as defendant No. 1 and all the heirs of Kapoorchand as defendant No. 2, in this judgment

hereafter. The landlord who had filed the suit in question and who is present before me will be referred to hereinafter as the plaintiff.

3. The plaintiff filed a regular Civil Suit No. 94 of 1971 against the defendants for the possession of the suit premises on various grounds including

the grounds of default in the payment of rent, unlawful subletting and bona fide requirements of the landlord. It is unnecessary in this judgment to

refer to the written statement of the defendants. The next relevant fact is that on 24-1-1973, a compromise was arrived at between the plaintiff,

and defendant No. 1 only. By the said compromise defendant No. 1 admitted the plaintiff''s claim. He admitted the various arrears. However, in

clause 4 of the Compromise Agreement it was provided that in case defendant No. 1 paid the various arrears to the plaintiff within the stipulated

period the decree should be marked as satisfied and that the plaintiff should not recover possession of the suit premises. However, it was further

provided that in the case of default on the part of defendant No. 1 in that behalf the decree should be executed by the plaintiff and that he should

recover possession of the suit premises. Clause 7 of the said compromise is of somewhat intriguing character. What is mentioned in said clause has

got some relevance with the question to be decided in this petition. Hence the translation of the said clause 7 may be set out fully. The said clause 7

runs as follows :--

The other defendants documents not reside in the suit premises; but for technical reasons they are made parties to the suit. The plaintiff does give

his consent for an order to be passed against those defendants also as against this defendant.

Clause 9 provided that plaintiff was at liberty to get refund of the Court-fees paid by him for the purpose of filing of the suit. This compromise was

signed by defendant No. 1 only. In no sense of the terms defendant No. 2 had any truck with this compromise. What is more bewildering is that

the Court purported to pass a decree in terms of this compromise but the Court did not even purport to pass a decree against defendant No. 2

and as such the suit filed against defendant No. 1 was neither dismissed nor decreed. It appears that the Court was practically oblivious of the fact

that in the suit relief was claimed not only against defendant No. 1 but also defendant No. 2 who was after all a joint lessee with defendant No. 1.

It is the grievance of the plaintiff that original defendant No. 1 committed default in the matter of compliance with the stipulations in the compromise

decree and hence he filed the Darkhast for recovery of the possession of the suit premises by execution of the decree. In this Darkhast defendant

No. 1 as well as defendant No. 2 were impleaded as judgment-debtors.

4. The execution was resisted by the defendants on various grounds. One of the grounds was that the decree was a nullity inasmuch as the Court

had no jurisdiction to pass a decree against a tenant protected by the Bombay Rent Act by a compromise. The second ground of resistance was

that no decree was passed against defendant No. 2 and inasmuch as the lease was a joint lease, the entire decree was inexecutable. It was also

contended further that the compromise resulted in the creation of a fresh tenancy in favour of the defendants.

5. The trial Court seems to have negatived the defendant''s contention relating to the creation of a fresh tenancy. However, the trial Court was

persuaded to take the view that the decree passed against defendant No. 1 alone was inexecutable in view of the fact that there was no judgment

or decree against the other defendant who was the joint lessee. On this ground the executing Court held the execution not to be maintainable and

hence the Darkhast was dismissed by the Court.

The present petition is filed by the original decree-holder against the said order invoking my jurisdiction under Article 227 of the Constitution of

India.

6. Mr. Walawalkar, the learned Advocate appearing for the petitioner, questioned the correctness of the reasoning of and ultimate conclusion

arrived at by the lower Court. According to him, even though defendant No. 2 was a joint lessee still there was no provision in the CPC by virtue

of which the decree could not be passed against one of the joint lessees alone. He contended that if the decree was passed against one of the joint

lessees it would not be binding upon the other joint lessee and to that extent the decree-holder shall have obstacle in the matter of execution of the

decree. But that fact by itself, contends Mr. Walwalkar, does not make the decree passed against one of the joint lessees a less of a decree.

I am not impressed by this argument. To my mind in the ultimate analysis the procedural law has got to be subservient to the substantive law. When

a joint lease is given to two persons the landlord can neither terminate the tenancy of only one of the lessees nor can he file a suit for eviction only

against one of the lessees. If he files such suit that would be a case of non-joinder of necessary party and it is well known that if the necessary party

is not impleaded the suit has got to be dismissed. Taking the illustration of the instant case itself. if the plaintiff had filed a suit against defendant No.

1 alone with a specific averment that he was one of the joint lessees, the trial Court would have no option but to dismiss the suit, for the simple

reason that such a suit was just not maintainable. It is not that the decree in such a case would be merely not executable against the other joint

lessee who was not a party to the suit. The legal position would be that no decree could be passed even against the joint lessee who was very

much impleaded.

It therefore follows that the decree in such a case against one of the joint lessees alone would be wholly inexecutable and in that sense a nullity. I

am, therefore, in agreement with the view taken by the lower Court to the effect that in the absence of a decree being passed against defendant

No. 2, the entire decree was non set.

7. I may also refer to the submissions made by Mr. Agarwal in support of the order passed by the lower Court. His contention was that a glance at

the decree passed even against defendant No. 1 would show that a fresh contractual tenancy was created in favour of the defendants. He

contended that in any event both the defendants were allowed to live in the premises even subsequent to the date of the decree. But that was not

all. He contended that even according to the decree-holder, if the demands as regards arrears of rent made by the decree-holder were complied

with by defendant No. 1, the decree for possession was not to be executed by the plaintiff at all and in that case both the defendants would

continue to remain in possession as tenants. He contended that such a possession was nothing but that of a new contractual tenant. He further

contended that even assuming that a tenancy could not be spelt out from such a decree the fact remains that both the defendants would continue to

remain in possession in their own right and if after all the arrears were paid they continued by virtue of the provisions of the decree they could not

be subsequently evicted except without (sic) a suit against them. This would give rise to an inference that the defendants were constituted at least as

the licensees of the plaintiff and the contention was that having regard to the provisions of the amendment of the Bombay Rent Act which came into

effect from 1st Feb. 1973 the defendants must be deemed to have been completely protected. He contented that the said protection was bound to

be made available to them even in the present execution proceedings.

His further contention was that the compromise decree was without jurisdiction and in this contention he referred to the judgments of the Supreme

Court reported in Kaushalya Devi and Others Vs. Shri K.L. Bansal, , K.K. Chari Vs. R.M. Seshadri, According to him the present case was

governed by the above authorities and not by the authorities of this Court reported in Digambar Narayan Kulkarni Vs. Gajanan Laxman Barve, ,

Digambar Narayan Kukarni v. Gajanan Laxman Barve. According to him the facts of the case did not justify the application of the dictum of law

laid down by the Supreme Court even in Smt. Nai Bahu Vs. Lala Ramnarayan and Others, , Smt. Nai Bahu v. Lala Ramnarayan. Mr. Walawalkar

on the other hand contended that the facts of the instant case certainly require application of the dictum of law laid down in the cases reported in

(1976) 78 Bom LR 252 as also by the Supreme Court in Smt. Nai Bahu Vs. Lala Ramnarayan and Others, .

Since I am not deciding this question by examination of the authorities I documents not propose to set out the various ratios of the abovementioned

various decisions. With the consent of Mr. Walawalkar I proceed to assume that Mr. Agarwal is right in contending that the present decree was a

nullity and it was inexecutable for any of the reasons mentioned by Mr. Agarwal.

8. The question then arises as to what is the duty of the Court in these circumstances. The contention of the judgment-debtor is that though the

decree was passed against one of the two defendants, the decree was wholly inexecutable firstly because no decree could be passed by

compromise, secondly because the decree has been passed only against one of the joint lessees and passing of such a decree was without

jurisdiction and thirdly because no decree could be passed by compromise against tenants protected by Ss. 12 and 13 of the Bombay Rent Act.

But the point is that if no decree has been passed against defendant No. 2 then it cannot be said that the original suit was full disposed of at all. As

a matter of fact, it is possible to state as a statement of law that if the executing Court takes a legitimate view that the decree brought before it is a

nullity, it is not a decree at all. The suit in which nullity of a decree is passed is a suit in which in fact no decree is passed and if that conclusion is

correct it is just a short step to the further conclusion that the suit in question really speaking remains as undisposed of as ever.

9. The question then arises is whether the original plaintiff should be driven to file a separate suit or whether the original suit itself should be directed

to proceed from where it left off.

The contention of Mr. Agarwal was that the suit is disposed of once for all when the decree in question was passed in the instant case. His

contention is that even though the decree passed was a nullity or was an inexecutable decree, still there was a decree and that when the decree

was passed by the Court, the Court became functus officio. If the plaintiff was aggrieved by the said decree, either he had to file an appeal against

the said decree, if it was a decree in invitum, or had to take appropriate proceedings by way of suit or otherwise to have his rights established.

Revival of the previous suit in which such a decree was passed,. ::contends Mr. Agarwal , was inconceivable.

10. I have given my anxious thought to this entire question but I do not find it possible to subscribe to the view urged by Mr. Agarwal. To my mind

such a view is neither desirable nor warranted by the provisions of our procedural law. As a general proposition of law it is not tenable, nor is it

tenable with reference to the facts of the instant case.

11. I will first deal with reference to the particular facts of the instant case. In the instant case what we find is that the suit was filed by the landlord

against the two joint lessees for eviction. One of the lessees entered into a compromise with the landlord and allowed a conditional eviction decree

to be passed against him. The point is that to that compromise the other joint tenant was not a party at all. But that is not all. What is more

important is that even the Court has neither purported to pass any decree against him nor has done anything which could be construed to be a

decrial order against him. I scanned the entire compromise decree from top to bottom and called upon Mr. Agarwal to point out anything in the

decree which would justify an inference that the decree was passed against defendant No. 2. The contention of Mr. Agarwal was that the very fact

that a decree has been passed by the Court together with an order for refund of Court-fees shows that implicitly there is a decree against

defendant No. 2. I fail to see any justification for such a reasoning. If it is possible to contend that merely because there is no decree against

defendant No. 2, the decree must be deemed to have been passed against defendant No. 2; it is equally possible to hold that in view of the

absence of any decree defendant No. 2 had been in fact dismissed by the trail Court. It is really impossible for the Court not to come to the

conclusion that no decree is passed by the Court vis-Ã¯Â¿Â½-vis defendant No. 2 at all. If that is so, it follows that the suit remains undisposed of and

continues to remain as a pending suit.

The position, therefore, is that so far as defendant No. 1 is concerned there was a purported decree against him; but it was nullity meaning thereby

it was not a decree in the eyes of law. So far as defendant No. 2 is concerned, neither in fact nor in law any decree is passed. To my mind, in the

facts of the instant case it would follow that the Court might have intended to pass something like a decree but in fact passed no such order as

could be recoginsed as a decree in the eyes of law. The conclusion must, therefore, follow that the Court has not passed any decree. If there is no

decree in the instant case, it is the bounden duty of the Court to proceed with the matter from the point where it left off its proceedings without

passing of a decree.

12. Mr. Walawalkar invited my attention to the provision of O. 9, R. 11 of the CPC which provides as follows:

Where there are more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court

shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Relying on this provisions Mr. Walawalkar tried to justify the view that I am taking namely that the suit against defendant No. 2 cannot really be

said to have been disposed of by the Court at all. He pointed out that the trial Court ahd in fact failed in its duty or obligation when no order

whatsoever was passed by the Court in compliance with the said provision in O. 9, R. 11 of the Civil Procedure Code. To my mind the above

legal provision really embodies the general principle, namely, that order passed by the Court can partake the character of a decree unless by the

order the rights of the parties are adjudicated upon one way or the other. That is the real import of the concept of a decree which is evident from

the very definition of the word ""decree"" obtaining in Section 2(2) of the Civil P. C.

13. The next question then arises is what is the modality by which the Court would direct the trial Court to perform its duty of bringing the suit to its

logical and legal conclusion. In the facts of the instant case I find no difficulty for the executing Court to treat this application to be a part of the suit

and to proceed with the suit as if no decree was passed. In the instant case the decree was passed long before sub-section (2) of S. 47 of the

CPC was deleted. Even the application for execution was admittedly filed before the amending CPC came into force. If that was so, the Court had

the power to treat the present application for execution to be a part of the suit itself.

14. Mr. Agarwal contented that executing Court ahd the power to treat the application to be a suit but that would be an independent suit and not

the continuation of the same previous suit. According to him, the execution application can be treated as suit. I see no question of executing Court

reviving the suit in which the decree was passed.

I am not at all satisfied about the correctness of this contention. The contention assumes that the previous suit has been disposed of. I have found

that the previous suit has not been disposed of; but before same Court an application was made for execution of the decree which in the eyes of

law, was never passed. Sub-section (2) of S. 47 of the CPC provided as follows :---

The Court may, subject to any objection as to imitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and

may, if necessary, order payment of any additional Court-fees.

I do not see any reason why the execution proceedings cannot be treated as the continuation of undisposed of suit. To my mind the provisions of

the said sub-section (2) of S. 47 read with the provisions of S. 151 of the CPC enjoined a duty upon the executing Court to direct the suit to

proceed against both the defendants on the assumption that no decree was passed in the suit. Neither on principles nor on authority I find no

justification to hold that such a modality should not be followed.

15. Even assuming that sub-section (2) of the S. 47 of the unamended CPC could not be invoked, to my mind, the provisions of Section 151 of

the Civil P. C., all by themselves, were sufficient for investing the Court with the jurisdiction to direct an indisposed of suit to be disposed of in

accordance with law. Resorting of inherent power is necessary in the case such as the instant case because it was the fault of the Court in passing

an inexecutable decree against defendant No. 1 and in forgetting that some kind of decree has got to be passed against defendant No. 2. If by

virtue of the mistake committed by the Court the plaintiff has been misled the penalty for such Court''s error cannot be allowed to be visited upon

the party who invoked the Court''s jurisdiction for getting justice. If the executing Court has found that the trial Court had passed a decree which

was a nullity there is no reason why the person in whose favour the nullity of a decree was passed should be driven to file a separate suit. There is

nothing in the CPC which prescribes or forbids the Court from picking up the old threads and from staring with the suit where it was left off.

In this connection it is to be noted that the execution application was filed in the same Court by which the so-called decree was passed. Different

consideration would have arisen if this decree had been transferred to another Court for execution. The transferee in such a case would probably

have to remain content by pronouncing that the decree was a nullity leaving the decree-holder to take appropriate proceedings for enforcing his

rights.

16. Even assuming that the executing Court was wholly helpless in the mater of giving any assistance to the original plaintiff, either under unrepealed

S. 47 or u/s 151 of the Civil P. C., it need not be assumed that the original plaintiff had no other alternative remedy. Once the executing Court

finally pronounced the decree to be a nullity he could certainly more the original Court by the appropriate application-

(a) inviting its attention to the fact that since the decree previously passed by itself was found by a Court of competent Jurisdiction to be a nullity,

the original suit had remained undisposed of;

(b) requesting the Court to start proceeding anew with a view to bring the suit to its fluctuation by passing an appropriate executable decree, if

necessary, by taking evidence and after hearing the parties in accordance with provisions of law.

If the plaintiff made such an application, the Court would be to my mind duty-bound to entertain the same and to proceed with the suit, on the

basis that the same stood revived, from the point from which it was wrongly left off.

17. Mr. Agarwal, however, came out with two-fold caveat against the above course. Firstly, that the moment the Court had passed the decree, in

the instant case on 24-1-1973, the Court became functus office so far as that suit was concerned. Subsequent application by the plaintiff to

proceed with the suit was, therefore, inconceivable and not maintainable. Secondly, he contended that there is no provision for such a modality of

procedure in the Civil Procedure Code.

18. The concept of the Court being function office upon passing of a decree is, to my mind, a somewhat slippery concept. It is no doubt the result

of the total reading of the procedural law governing rights of parties. But the concept itself vests upon a few postulates. One such postulate is that

Court becomes functus is officio after the passing of the decree provided the decree is a valid decree and has become final. Supposing an appeal

was pending against the decree and operation of the decree is not stayed it can be legitimately argued that during and in spite of the pendency of

the appeal, the trial Court had become functus office vis-a-vis the suit. But supposing the appeal is allowed, the decree is set aside and the mater is

remanded to the trail Court for disposal according to law, what happens to the plea that the trial Court had become functus office? It vanishes in

the thin air. That is why I started this para with the statement that this functus office concept is a some-what slippery concept.

I have stated above that the validity of the decree is one of its postulates for the purpose of invoking the concept of functus officio. You cannot say

that no valid decree is passed by the Court to bring the proceeding of the suit to an end but, still, the Court has become functus officio.

The fact that the decree purporting to have been passed by the Court was not a valid decree can be discovered by the recourse to appellate

proceeding as mentioned above. it can be discovered even by the same Court, in given circumstance, in its review jurisdiction. Likewise, in given

circumstance, it can be also discovered in collateral proceeding such as an independent suit to the execution proceedings. The result of all these

proceedings is one and the same: the original suit stands revived with the result that the Court which had become functus officio by virtue of its

decree ceases to be functus office and once again becomes seized of this suit.

19. The second caveat of Mr. Agarwal need not detain us long. The question it: Where is the provisions in the CPC for this? One answer is: What

is there in the Code within inhibits such course? This is not an idle rhetoric. The Code itself enjoins upon the Court the duty to bring the suit to its

logical conclusion by the passing a valid decree. Until such a decree is passed every reasonable proceeding, not specifically prohibited by the

Code, aiming at persuasion of the Court to pass such a decree, must be held to be one warranted by the Code.

20. I have dealt upon and have discussed this question at some length because so far as I am aware, this aspect of procedural law has not been

examined by any Court. My attention was not invited by either of the learned Advocates to any Authority discussing the question or deciding it,.

one way or the other an din spite of the fact that ht hearing of the petitioner was adjourned by me sufficiently to enable them to examine the

precedents, if any, on the point. since the question cannot be decided by reference to any authorities, I must decide the same on the basis of

principle.

21. It follows that upon finding that the decree under execution was no decree at all, the executing Court should have given appropriate direction to

the parties so that the suit which remained incomplete got itself disposed of according to law. The original suit, No. 94 of 1971, was filed in the

Court of Civil Judge, Junior Division Wadgaon and the darkhast for execution of the decree also was filed in the same Court which held that the

decree was nullity. The Court should have thus seen that the suit in its own Court had remained undisposed of. The Court should have, therefore,

given direction to both the parties to proceed with the suit. To my mind it was the duty of the Court to follow this course because in the absence of

such a direction the suit on its file would be deemed to be remaining undisposed of ad infinitum. If the Court failed to reform its above duty it can

be legitimately said that to some extent at least the Court would be guilty of dereliction of duty. The Court had passed an order just pronouncing

that the decree was a nullity; in other words that the original suit. No. 94 of 1971 has remained undisposed of. Against the order involving such

pronouncement the present writ petitioner is filed in this Court and the question arises as to what course I should adopt. I can myself direct the

petitioner to move the trial Court so that the Court would continue with the suit. In the alternative I can follow one of the other two courses in the

exercise of my powers of superintendence under Art. 227 of the Constitution. I can direct the executing Court to exercise its power under S. 47(2)

of the CPC as it stood before it deletion to treat the application for execution as a part of the proceeding with in the main suit itself and to proceed

with the suit so as to pass a valid decree in the same. In the alternative I can direct the learned Civil Judge, Junior Division who would be exercising

jurisdiction in Civil Suit No. 94/71 to proceed with the suit on the basis that no decree was passed by him in the suit, that is to say, to proceed with

the suit just at the point before the compromise was recorded by him.

22. Mr. Agarwal, however, contended that such a course is not open for me in my jurisdiction under Art. 227 of the Constitution and he

contended that my power of superintendence did not extend to the reviving of a disposed of suit for give direction to the lower Court to continue

with the suit.

The contention has got to be rejected firstly for the reason that I am not directing the revival of the suit at all. The revival of the suit postulates that

the suit was disposed of. I found in the instant case that neither in the eyes of law nor as matter of fact has the suit been disposed of. I am not,

therefore, directing revival of any suit at all.

The contention cannot be accepted also because I documents not seen the limitation on my power of superintendence under Art. 227 of the

Constitution is as restrictive as Mr. Agarwal would suggest. Mr. Agarwal in this connection relied upon a well known Supreme Court case, AIR

1975 1297 (SC) . He particularly relied upon the following observations of the Supreme Court in the said case (at p. 1301):

It is thus, clear that the powers of the jurisdiction interference under Art. 227 of the Constitution with orders of judicial or quasijudicial nature, are

not greater than the power under Art. 226 of the Constitution. Under Art. 226 of the power of interference may extend to quashing an impugned

order on the ground of a mistake apparent on the face of the record. But under Art. 227 of the Constitution, the power of interference is limited to

seeing that the Tribunal functions within the limits of its authority.

I am not at al satisfied that the above dictum of law has any application of the facts of the present case at all. I find in the instant case that the trial

Court as well as the executing Court had certain functions to perform. One of the functions of the trail Court was to pass a valid decree in the suit.

I find that the trial Court did not pass a decree at all. I find that the executing Court should have treated this application for execution as a

proceedings in the suit and should have treated this application for execution as a proceeding in the suit and should have continued with the suit.

This function has not been performed by the executing Court at all. When it is contended that my power is limited to seeing that the Tribunal

functions within the limits of its authority it extends at least to this much namely to see that the Tribunal does not perform its functions. As stated

above I have found that the trial Court had shirked from its work and Executing Court did not apply its mind to the revisions u/s 47(2) and/or u/s

151 of the Civil Procedure code. I, therefore, documents not see why I cannot give direction to the Court in question to perform its function of

disposing of the suit in accordance with law and as to why my power of superintendence under Article 227 of the Constitution should be

unavailable for such a contingency.

23. In this view of the matter I am not inclined to adopt the first course mentioned above and to drive the plaintiff/petitioner to move the trail Court

for proceeding with the suit. I am of the opinion that even if the contention of defendants No. 1 about the compromise decree being a nullity was

accepted, still it was incumbent upon the Court to proceed with the suit against both the defendants. I may make it clear that when the suit starts

afresh from the point where it was wrongly left by the trial Court, it will be open for both or either of the defendants to raise such pleas relating to

the legal consequence of the compromise arrived at between the plaintiff and defendants No. 1 as may be found fit by them. It will be equally open

for the plaintiff to contend that so far as defendants No. 1 is concerned there has been already an agreement arrived at between them which could

be governed by the provisions of Order XXIII, Rule (3) of the Civil Procedure Code. When such contentions are urged, the Court trying the suit

shall adjudicate upon them in accordance with the provisions of law.

24. The petitioner is, therefore, allowed but only to the extent as mentioned above. The rule is made absolute to the extent mentioned above. The

trail Court is directed to treat Civil Suit No. 94 of 1971 as not having been disposed of by the Court and to proceed with the hearing of the suit

afresh after giving notice to all the parties. There shall be no order as to costs of this suit.

25. Mr. Agarwal asked for leave to appeal to the Supreme Court. If I had jurisdiction to grant a certificate to him to file an appeal to the Supreme

Court I would have certainly been inclined to give such a certificate after hearing Mr. Walawalkar in that behalf, because, to my mind, the question

relating to the modality to be followed by the Court with a view to doing justice to both the parties within the framework of the present procedural

law, in the case when a decree is found by the Executing Court to be nullity, is something as regard which a final pronouncement of law by the

Supreme Court would be of very great help for all the Court in India. However, I cannot accede to Mr. Agarwal''s request because I documents

not have any jurisdiction to grant such certificate having regard to the provisions of Art. 133(3) of the Constitution of India.

26. The trial Court is directed to expedite the suit and to disposed of the same in any even before 30th September, 1982.

27. Petition partly allowed.