



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

SECOND APPEAL NO. 326/2015

Sau. Ushabai w/o Nanaji Andelkar,
Aged about 55 years,
Occupation Housewife,
R/o 8th Mile, Waddhamna,
Amravati Road, Nagpur, Tahsil &
District Nagpur

... **APPELLANT**

...VERSUS...

1. Smt. Mainabai wd/o Ganpatrao
Wakde aged about 73 years,
Occupation Housewife,
R/o 8th Mile, Waddhamna,
Amravati Road, Nagpur, Tahsil &
District Nagpur
(Deleted as per Court's Order
dated 29/2/2016)
2. Smt. Chhaya wd/o Madan Wakde,
Aged about 42 years,
Occupation Petty Business,
3. Anup s/o Madan Wakde,
Aged about 23 years,
Occupation Service,
4. Ku. Yamini d/o Madan Wakde,
Aged about 22 years,
Occupation Student,

5. Ku. Kamini d/o Madan Wakde,
Aged about 21 years,
Occupation Student,
All R/o Plot No.408, House No.825,
Chandanbai Temple Layout,
Chandan Nagar, Nagpur. ...RESPONDENTS

Shri P.K. Mishra, Advocate for appellatnt
Shri Masood Shareef, Advocate for respondent Nos. 2 to 5

CORAM : SMT. M.S. JAWALKAR, J.

RESERVED ON : 31/10/2023

PRONOUNCED ON: 22/12/2023

JUDGMENT

Heard learned Counsel for both the parties.

2. The present second appeal is filed by the appellatnt being aggrieved by the judgment and decree passed by the learned District Judge-9 at Nagpur in First Appeal No.97/2011 arising out of order dated 01/01/2011 in R.D. No.6/2002 against the order of

rejection of the objection under Section 47 of the Civil Procedure Code, between the parties.

3. On 01/08/2016, this Court framed following substantial questions of law:

“i) Whether the Regular Civil Appeal is maintainable challenging the rejection of objection raised under Section 47 of the Code of Civil Procedure or it is only a revision under Section 115 of the Code of Civil Procedure?”

ii) Whether the lower Appellate Court was right in passing a decree for separate possession of the property particularly when the sale deed has already been executed pursuant to decree passed in suit for specific performance of contract?”

4. The brief facts of the Plaintiff's case are as under:-

The appellant is original plaintiff. The original defendants Madan s/o Ganpatrao Wakde and his mother Mainabai wd/o Ganpatrao Wakde though executed an

agreement on 24/09/1998 in favour of the plaintiff but virtually failed to execute the sale deed in due performance of the said agreement. The plaintiff/present appellant has filed R.C.S. No.1794/1999 for specific performance of agreement of sale dated 24/09/1998 which was decreed in her favour on 18/10/2001. Accordingly sale deed was executed on 17/10/2003 through Nazir of the Court. The plaintiff claimed possession of suit property in R.D. No.06/2002 wherein J.Dr.-1 was son and J.Dr.-2 is his mother/present respondent No.1.

5. After death of J.Dr. No.1 on 22/07/2005 his LR's who are respondents No.2 to 5 were brought on record and enforcement of decree for possession was sought against all the respondents.

6. The respondent Nos.2 to 5 only filed the objection on 11/07/2008 that agreement made by the predeceased son of the J.Dr.-2 was not for legal necessity and bad in law because the J.Dr.-1 was addicted to the habit of drinking liquor. The objection was rejected on 01/01/2011 and the trial Court directed for issuance of warrant for possession.

7. It is alleged that respondent Nos. 2 to 5 have filed the First Appeal No.97/2011 in the Court of District Judge-9 at Nagpur which was not at all maintainable under law and beyond jurisdiction of lower Appellate Court to entertain and adjudicate. The learned lower Appellate Court not only allowed the appeal but modified the decree in Old R.C.S. No.1794/1999 in the light of objection under Section 47 of the Civil Procedure Code filed by the respondent Nos. 2 to 5 in the execution

proceeding. The Court then pleased to pass an independent decree for partition and separate possession although the suit for partition was never filed by the main contesting defendant Nos.1 and 2, in R.C.S. No.1794/1999 or after death of J.Dr. No.1 by the respondent Nos.2 to 5. The aforesaid findings is the subject matter of challenge in the present appeal.

8. It is the contention of the learned counsel for the appellant that the learned District Judge - 9 at Nagpur was not having the jurisdiction to entertain and decide the Regular First Appeal under Section 96 of the Civil Procedure Code r/w Order 41 Rule 1 of the Civil Procedure Code against the impugned order dated 01/01/2011 passed in execution proceeding R.D. No. 6/2002, whereby the objection u/s 47 of the C.P.C. filed by respondent Nos. 2 to 5 was rejected.

9. It is further contention that the First Appellate Court cannot go behind the decree for specific performance passed in R.C.S. No. 1794/1999 on 18/10/2001 to which Madan Wakde, defendant No.1, under whom the appellant claim suffered the decree.

10. It is further contended that the decree for partition, separate possession in appeal against the order passed in execution proceeding can not be passed by the Appellate Court, when the suit property has been already sold by the Court in due performance and compliance of the decree to the appellant/original plaintiff.

11. Learned Counsel for appellant relied on following judgments:-

- 1) *Vedic Girls Senior Secondary School, Arya Samaj Mandir, Jhajjar Vs. Rajwanti (smt.) and Others, reported in (2007) 5 SCC 97*

- 2) *Paack-in-India, Ranjangaon Vs. VSR Foods and Beverages Pvt. Ltd, reported in 2011 (5) Mh.L.J. 575*
- 3) *Manik Dyandeo Gore Vs. Dajiram Vithoba Gore and others, reported in 2007 (1) AIR Bom R 380*
- 4) *S. Bhaskaran Vs. Sebastian (dead) by LRs' and others, reported in (2019) 9 SCC 161*
- 5) *Brakewel Automotive Components (India) Pvt. Ltd. Vs. P.R/ Selvam Alagappan, reported in 2017(6) Mh.L.J. 47*
- 6) *Sameer Singh and another Vs. Abdul Rab and others, reported in 2015(3) Mh.L.J. 489*
- 7) *Narinder Singh and others Vs. Kishan Singh (dead) by LR's and others, reported in (2002) 6 SCC 46*
- 8) *Lalitikumar Ramlal Sharma and others Vs. Jadaᵓbai Murlidhar Sharma and others, reported in 2002(4) Mh.L.J. 649*

12. Learned counsel for the respondents supported the judgment and decree passed by the learned lower appellate court and stated that the lower appellate court

has rightly exercised jurisdiction and taken into consideration the fact, circumstances and evidence placed on record and passed an appropriate order which needs no interference. Further prayed for the dismissal of the present second appeal. It is contended that though application is seem to be filed under Section 47 of C.P.C., it is to be treated as objection under Order 21, Rule 97.

13. Learned Counsel for respondents relied on following judgments:-

- 1) *Vineeta Sharma Vs. Rakesh Sharma and others, reported in (2020) 9 SCC 1*
- 2) *Dy. Chief engineer (Construction) Central, Central Railway, Bhusawal Vs. M/s. B.N. Agrawal, reported in 2022 (1) Mh.L.J. 395*
- 3) *Surinder Singh Vs. Kapoor Singh (dead) thr. LR's and others, reported in (2005) 5 SCC 142*
- 4) *Pemmada Prabhakar and others Vs. Youngmen's Vysya Association and others, reported*

in (2015) 5 SCC 355

5) *M. Yogendra and others Vs. Leelamma N. and others, reported in (2009) 15 SCC 184*

6) *Sheela Devi and others Vs. Lal Chand and Another, reported in (2006) 8 SCC 581*

7) *Nitin Gandhi and another Vs. Dinyar Pheroz Dubash and others, reported in 2015(2) Mh.L.J. 850*

8) *Nusserwanji E. Poonegar and others Vs. Shirinbai F. Bhesania and others, reported in 1984 Mh.L.J. 356*

9) *N.S.S. Narayana Sarma and others Vs. M/s. Goldstone Exports (P) Ltd. and others, reported in AIR 2002 SC 251*

10) *Shripati Ganpati Jadhav and others Vs. Chandrakant Ganpati Jadhav and others, reported in 2011 (2) Mh.L.J. 689*

14. I have heard both the parties. Perused judgment and considered citations relied on by the parties.

15. As per the appellant, she is purchaser and in her favour the decree was passed in R.C.S. No. 1794/1999. The original defendants- Madan Ganpatrao Wakde and his mother Mainabai Wd/o. Ganpatrao Wakde though executed an agreement on 24/09/1998 in favour of the plaintiff- Ushabai Nanaji Andelkar, however, failed to execute the sale deed. In view thereof, the plaintiff had filed R.C.S. No. 1794/1999 against defendants- Madan and Mainabai, which was decreed on 18/10/2001. It was not further challenged. In execution proceedings i.e. R.D. No. 06/2002, in view of the order passed by the learned Trial Court, the sale deed came to be executed on 17/10/2003 through Nazir of the Court. In execution, the plaintiff- Ushabai applied for recovery of possession. The same was objected by Madan and Mainabai. The plaintiff- Ushabai had applied for amendment to include the prayer for possession which is consequential relief,

flowing from the decree for specific performance of agreement to sell. The executing Court allowed the amendment on 30/08/2004, which was challenged in Writ Petition No. 4763/2004. During the pendency of said W.P., the original J.Dr.No. 1- Madan expired on 22/07/2005. The present respondents were brought on record as legal heirs of Madan. The said W.P. came to be dismissed by this Court on 08/02/2007.

16. Thereafter, the learned Trial Court passed the order for issuance of warrant for possession of suit property in favour of the appellant/plaintiff. The respondent nos. 2 to 5 herein then filed an objection application under Section 47 r/w. Section 50 of the Code of Civil Procedure alleging therein that defendant - Madan Wakde who was the husband of respondent no. 2 herein and father of respondent nos. 3 to 5 was addicted

to many vices and agreed to sell the suit property for satisfying his own lust but not for any legal necessity. The respondent no. 1- Mainabai did not support the objection. The learned Trial Court rejected the objection.

17. It is contention of the appellant that the Regular First Appeal No. 97/2011 against the rejection of objection was not maintainable. It is submitted that the learned District Judge-9, Nagpur was not having any jurisdiction to entertain the appeal nor to declare any share in the suit property to the appellants in First Appeal. It is further contention of the appellant that the learned Judge transgressed its jurisdiction. The order passed in execution proceedings never partakes the character of decree and the executing court cannot go behind the decree unless a serious fraud played upon the Court in obtaining the decree.

18. The learned counsel for the appellant relied on *Vedic Girls Senior Secondary School, Arya Samaj Mandir, Jhajjar* (supra) and *Paack-in-India, Rajangaon* (supra) in support of his contention that the Court cannot go beyond the decree. In both the matters, the facts are distinguishable in the case of *Vedic Girls Senior Secondary School* (supra). The plaintiff disputing the salary payable to her which ought to have claimed by amending her prayer in the plaint. As the same not have been done, it is held that the executing Court has no jurisdiction to go beyond the decree as passed. Similarly in *Paack-in-India* (supra), in execution petition, the respondent made an application contending that he had made payments of certain amounts to the petitioner between the years 2004 and 2007 and it fully covers the decretal amount and the decree was satisfied. It is held that the payments that the respondent alleged to have

made to the respondent are made between the years 2004 and 2007 (i.e. prior to the passing of the decree). The respondent could have and ought to have taken the defence of the alleged payments in the written statement and/or in the application for leave to defend made in the suit. Once the suit is decreed, the executing Court is bound to execute the decree as it is and in such circumstances, it cannot go behind the decree. The facts involved in the present matter are distinguishable from the facts involved in the impugned judgment. Moreover, it is the contention of the respondents that their application though labelled under Section 47, it ought to be treated as an objection under Order 21, Rule 97.

19. For the similar contention, the appellant relied on *Manik Dyandeo Gore* (supra), *S. Bhaskaran V/s. Sebastian* (supra) and *Brakewel Automotive*

Components (India) Pvt. Ltd. (supra). In the *Brakewel Automotive Components (India) Pvt. Ltd.* (supra), it is held by the Hon'ble Apex Court that Section 47 of Code mandates determination by an executing Court, questions arising between the parties and their representatives relating to execution, discharge or satisfaction of decree and does not contemplate any jurisdiction beyond the same. A decree of Court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof. In the present matter, as fullfledged judicial enquiry was conducted in the objection, the application is treated under Order 21, Rule 97 and not under Section 47 of C.P.C. As such, the judgments relied on are not applicable in the present set of facts.

20. As against this, the learned counsel for the respondents submitted that even if the application is titled as under Section 47 of C.P.C., it has to be treated as read with Order 21, Rule 97 of C.P.C. It is the decision on objection amounts to decree of the Court and therefore, the appeal would definitely lie. It can be seen that while deciding objection, issues were framed. As such, the Court recorded finding under Order 21, Rule 97, 100 and 102 of C.P.C. which amounts to decree.

21. The learned counsel for the appellant relied on *Lalitkumar Ramlal Sharma* (supra), wherein this Court held as under:-

“13. It is reiterated that merely because the present respondents purchased the suit property from the legal representatives of one of the defendants does not put them in the shoes of the representatives of original defendant No. 1 Ramprasad and, therefore, in my opinion, they cannot be termed as representatives of the original defendant No. 1 and hence, Sub-section (1) of Section 47, which deals with this aspect, is not attracted. In the instant

case, both the primary requirements of Section 47(1) are not satisfied, i.e. respondents were not parties to the suit and they cannot be termed as representatives of the defendant and, therefore, provisions of Sub-section (1) of Section 47 of the Code of Civil Procedure are not attracted. Consequently, the bar of filing of separate suit provided under Sub-section (1) of Section 47 is also not applicable in the present case."

22. He also relied on, in support of his contention that, the revision would be appropriate remedy and not the appeal. However, the ratio laid down in the said citation is not as to whether the revision will lie or the appeal would lie. The revision though preferred before the High Court, the Hon'ble Apex Court held that the High Court in revision was justified in declining to interfere with the order of the executing Court. The facts involved in the said matter are distinguishable from the facts involved in the present matter.

23. The learned counsel for the appellant further placed reliance on *Sameer Singh and another* (supra),

wherein the Hon'ble Apex Court gave reference of the matter of "*Noorduiddin V/s. Dr. K. L. Anand, (1995) 1 SCC 242*, wherein *the executing Court had rejected the application of the appellant therein on the ground that the High Court had already adjudicated the lis. Analysing the language employed in Rules 97, 98 and 100 to 104, the Court held :-*

"16. Thus, the scheme of the Code clearly adumbrates that when an application has been made under Order 21, Rule 97, the court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding Civil Procedure Code (Amendment) Act, 1976, right of suit under Order 21, Rule 103 of 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction

of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution.”

Elucidating further, the Court opined that adjudication before execution is an efficacious remedy to prevent fraud, oppression, abuse of the process of the court or miscarriage of justice. The object of law is to meet out justice and, therefore, adjudication under Order XXI, Rules 98, 100 and 101 and its successive rules is sine qua non to a finality of the adjudication of the right, title or interest in the immovable property under execution.”

24. The Hon’ble Apex Court further held that,

“21. The aforesaid authorities clearly spell out that the Court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties. It also includes the claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property. The self-contained Code, as has been emphasised by this Court, enjoins the executing Court to adjudicate the lis and the purpose is to avoid multiplicity of proceedings. It is also so because prior to 1976 amendment the grievance was required to be agitated by filing a suit but after the amendment the entire enquiry has to be

conducted by the executing Court. Order XXI, Rule 101 provides for the determination of necessary issues. Rule 103 clearly stipulates that when an application is adjudicated upon under Rule 98 or Rule 100 the said order shall have the same force as if it was a decree. Thus, it is a deemed decree. If a Court declines to adjudicate on the ground that it does not have jurisdiction, the said order cannot earn the status of a decree. If an executing Court only expresses its inability to adjudicate by stating that it lacks jurisdiction, then the status of the order has to be different."

The conclusion recorded in the said matter is based on specific facts involved in the matter. In the said case, the executing Court has expressed an opinion that it has become *functus officio* and hence, it cannot initiate or launch any enquiry. In view of that, it was concluded that the High Court has fallen into error by opining that the decision rendered by the executing Court is a decree and, therefore, an appeal should have been filed, and resultantly allowed it and set aside the impugned order.

The High Court shall decide the matter as necessary under Article 227 of the Constitution of India.

25. In the present matter, the executing Court has not declined to adjudicate on the objection. On the contrary, it has framed issues and recorded the findings. As such, the order passed in objection is deemed to be a decree and the appeal would definitely lie against the said decree. The appeal is maintainable under Section Order 21, Rule 97 to 103 of C.P.C. As such, I answer the substantial question of law no. 1 in affirmative.

26. The learned counsel for the respondents relied on *N.S.S. Narayan Sarma and ors.* (supra) wherein the Hon'ble Apex Court held that,

“when any person claiming title to the property in his possession obstructs the attempt by the decree-holder to dispossess him from the said property the executing

Court is competent to consider all questions raised by the persons offering objection against execution of the decree and pass appropriate order which under the provisions of Order 21, Rule 103 is to be treated as a decree.

Rules 97 to 101 of Order 21 contain the provisions enabling the executing Court to deal with a situation when a decree holder entitled to possession of the property encounters obstruction from "any person". From the provisions in these rules the scheme is clear that the legislature has vested wide powers in the executing Court to deal with "all issues" relating to such matters"

27. The learned counsel also relied on *Shripati Ganpati Jadhav and ors.* (supra) wherein this Court held that,

"the law does not require that resistance or obstruction to the execution of a decree has to be made only at the stage when the bailiff comes to the site for delivery of possession. The obstruction can be raised even earlier by filing an application and such an application would

have to be decided by the executing Court after giving an opportunity to the decree holder and all the concerned. So construed the application made by the petitioners ought to have been treated as an obstruction or resistance to the execution and the reply by the respondent decree holder filed ought to have been treated as an application for removal of the obstruction. So treated, the order passed by the executing Court on 26th July, 2010 was clearly appealable under Rule 103 of Order 21 of the Code of Civil Procedure. Consequently, the impugned judgment of the District Court holding that the appeal was not maintainable is set aside.”

28. The learned counsel for the respondents relied on **Nitin Gandhi and anr.** (supra) wherein it is held that although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without any addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole.

29. The learned counsel also relied on *Nusserwanji E. Poonegar and ors.* (supra) in support of his contention that, the appeal would lie as the proceedings under Rule 101 and Rule 105 of Order 21 of the Code of Civil Procedure are in the nature of a suit and it would be appropriate for the executing Court to frame issues and allow parties to lead all evidence that they may desire to do. Whatever nomenclature may be, considering the prayer and the decision passed by the executing Court, which amounts to decree and the appeal is liable thereon.

30. The learned counsel for the respondents also placed reliance on *Dy. Chief Engineer (Construction) Central, Central Railway, Bhusawal* (supra) in support of his contention that, merely because a wrong nomenclature has been used in matter of seeking relief as

an interim measure or while granting relief, that would not by itself deter from efficacy of interim measure granted or power of Court to grant same.

31. The learned counsel for the respondents relied on *Pemmada Prabhakar and ors.* (supra) and *Surinder Singh* (supra) in support of his contention that when vendor has no complete title over the suit property and the agreement having not been executed by all co-sharers, same cannot be sought to be enforced by the plaintiff vendee. It is contended that the objectors were the coparceners in the property and they are having every right to retain their possession and to object.

32. The learned counsel for the respondents also relied on *Sheela Devi and ors.* (supra) wherein the Hon'ble Apex Court referred and relied on *Pratap Narain V/s. CIT*, wherein it is held as under:-

"17. The question again came up for consideration before a Division Bench of the Allahabad High Court in [Pratap Narain v. Commissioner of Income Tax](#), reported in (1967) 63 ITR 505 (All) wherein Pathak, J. (as His Lordship then was) opined: (ITR p. 510).

"It seems to us that it is now well settled, that when Hindu undivided family property is partitioned between the members of a Hindu undivided family, and a share is obtained on such partition by a coparcener, it is ancestral property as regards his male issue. They take an interest in it by birth, whether they are in existence at the time of partition or are born subsequently. We are of opinion that it is not correct to say that the share of the property, upon partition, constitutes the separate property of the coparcener and that it is only subsequently when a son is born that the property becomes ancestral property or Hindu undivided family property. The birth of the son does not alter the nature of the property. The property all along continues to be coparcenary property. ... But upon the birth of a son all the rights which belong to a coparcener belong to that son, and the enlarged rights hitherto enjoyed by the sole coparcener are now abridged within their normal compass."

33. The learned counsel for the respondents relied on *Vineeta Sharma* (supra) in support of his above said contention. The Hon'ble Apex Court held as under:-

28. *In case coparcenary property comes to the hands of a "single person" temporarily, it would be treated as his property, but once a son is born, coparcenary would revive in terms of the Mitakshara law. In Sheela Devi v. Lal Chand, reported in (2006) 8 SCC 581, it was observed: (SCC pp. 585-86, para 12)*

"12. The principle of law applicable in this case is that so long a property remains in the hands of a single person, the same was to be treated as separate property, and thus such a person would be entitled to dispose of the coparcenary property as the same were his separate property, but, if a son is subsequently born to him or adopted by him, the alienation whether it is by way of sale, mortgage or gift, will nevertheless stand, for a son cannot object to alienations so made by his father before he was born or begotten (See C. Krishna Prasad v. CIT reported in (1975) 1 SCC 160). But once a son is born, it becomes a coparcenary property, and he would acquire an interest therein."

34. The learned counsel for the respondents also relied on *M. Yogendra and ors.* (supra) wherein the Hon'ble Apex Court held that it is now well settled in view of several decisions of this Court that the property in the hands of a sole coparcener allotted to him in partition

shall be his separate property for the same was revive only when a son is born to him. The Hon'ble Apex Court referred the citation of *CWT V/s. Chander Sen* reported in (1986) 3 SCC 567 wherein the Hon'ble Apex Court held that it is clear that under the Hindu Law, the moment a son is borne, he gets a share in the father's property and becomes part of the coparcenary. His rights accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore, whenever, the father gets a property from whatever source from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. It is contended that there was no legal necessity to sell the property at least not proved by the plaintiff. In view thereof, the sale

is illegal and not binding on the shares of other coparceners.

35. Admittedly, the property which is suit property in this case fully described in para 1 & 2 of the application Exh. 42 was a leasehold property of Bhikaji in the name of his son. He constructed a house and started residing there. After his death, his two sons viz. Ganpat and Govinda continued their stay in this house along with their family. After their death, their legal heirs viz. Ramesh S/o. Govinda, Madan S/o. Ganpat and Smt. Mainabai Wd/o. Ganpat effected partition by executing registered partition deed dated 10/02/1984. As per said partition deed, northern portion which is the subject matter of this proceeding had fallen to the share of Madan and Mainabai. After this partition, they started residing in their northern portion with their family. Subsequently,

this northern portion was sold by Madan and Mainabai to the respondent Ushabai (sister of Madan) by virtue of sale-deed dated 17/10/2003.

36. In my considered opinion, the learned Appellate Court rightly appreciated the facts. The present appellant failed to establish that there was any legal necessity to sell the property. The property was admittedly ancestral property and therefore, the objectors were having share in the said property which is rightly appreciated by the learned First Appellate Court. I do not see any infirmity in the order passed by learned First Appellate Court though the decree is executed in pursuance to the judgment and order passed in the suit. It is not binding to the extent of share of the applicants/objectors/ coparceners. Once their rights are determined being coparceners, they have every right to

retain possession over the suit property in their share. Accordingly, the substantial question of law no. 2 is answered in the affirmative and I proceed to pass the following order:-

ORDER

- 1) The appeal stands dismissed.
- 2) The judgment and decree dated 23/02/2015 passed by the learned lower Appellate Court i.e. District Judge-9, Nagpur in R.C.A. No.97/2011 is hereby confirmed.
- 3) Decree be drawn up accordingly.

(Smt. M.S. Jawalkar, J.)