

2026:BHC-AS:32698



AOST 14178-26.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST.) NO. 14178 OF 2026

- | | | |
|---|---|---|
| <p>1. Mrs. Maijabeen Abdul Quaiyum Khan]
 Age: 56yrs., Occupation:]
 Self Employed]</p> |] | |
| <p>2. Ms. Nasreen Abdul Quaiyum Khan]
 Age: 33yrs., Occupation: Self Employed]</p> |] | |
| <p>3. Mr. Hajik Abdul Quaiyum Khan]
 Age: 29yrs., Occupation: Self Employed]
 All are residing at A-601, Blue]
 Monarch CHS Ltd., Next to Riddhi]
 Siddhi Building, Marol]
 Military Road, Andheri (East),]
 Mumbai 400059]</p> |] | <p>... Appellants.
(Orig. Plaintiffs)</p> |

Versus

- | | | |
|---|---|--|
| <p>1. M/s. Ajit Developer Pvt Ltd.,]
 A Company incorporated Under the]
 Companies Act 1956, and having]
 registered office at Gokul Building]
 Haridas Nagar, Shimpoli Road, Borivali]
 (West), Mumbai- 400 092.]</p> |] | |
| <p>2. Yasin Khan]
 Aged 65 years, Occ. Self Employed]
 Residing at 302, Mira Apartment, 3rd]
 Floor, Opp. Alphine Industries, Marol]
 Military Road, Andheri (East),]
 Mumbai-400060]</p> |] | |
| <p>3. Mrs. Eshrat Khan,]
 Age:62 yrs., Occupation: Housewife,]</p> |] | |

- 4. Mrs. Hasina Khan**]
 Aged 56 years, Occ. Self Employed]
 Both residing at 303, Mira Apartment,]
 3rd Floor, Opp. Alphine Industries, Marol] ... Respondents.
 Military Road, Andheri (East),] (Ori. Defendants)
 Mumbai 400 060.]

Mr. S. B. Prabhavalkar a/w. Mr. Nilesh S. Parte i/by Ms. Sukruta Chimalkar for Appellants.

Mr. Rajesh Kachare i/by Ms. Swati Gautam for Respondent No.1.

Coram : Sharmila U. Deshmukh, J.

Reserved on : July 16, 2026

Pronounced on : August 07, 2026

JUDGMENT :

1. The appeal is at the instance of the original Plaintiffs being dissatisfied by the impugned order dated 6th May, 2026 passed in Notice of Motion No.1580 of 2026 in S.C. Suit No.967 of 2026, dismissing the notice of motion.

2. S.C. Suit No.967 of 2026 was filed seeking declaration that the judgment and decree passed in Suit No.6169 of 2005 is bad in law, null and void and not binding on the Plaintiffs in view of the order of abatement dated 17th November, 2016 recorded in the roznama of Suit No.6169 of 2005 and for an order of permanent injunction restraining the Defendant No.1 from

executing the judgment and decree dated 21st September, 2024 passed by the City Civil Court in Suit No.6169 of 2005.

3. It was pleaded by the Plaintiffs that the Plaintiff No.1 is the widow of late Abdul Quaiyum Khan and the Plaintiff Nos. 2 and 3 are the son and daughter of the said deceased, who expired on 23rd January, 2016. The late Abdul Quaiyum Khan was the son of Dost Mohd. Atamohd Khan and upon the demise of late Abdul Quaiyum Khan on 23rd January, 2016, the Plaintiffs were having undivided share as per Muslim Law Inheritance in respect of the property left behind by late Dost Mohd. Atamohd Khan under registered conveyance of 21st August, 1941, the suit property bearing survey No.42, Hissa No. 2, Vile Parle Village, Andheri, admeasuring 1594 square meters was purchased by Aminabai Atamohd. Khan and Dost Mohd. Atamohd Khan, pursuant to which a chawl was constructed on the plot of land commonly known as "Aminabai Chawl". Aminabai expired on 25th December, 1988 leaving behind her son Dost Mohd. Atamohd Khan, who became the absolute owner of the property. The said property was declared as slum under the Slum Improvement Act, 1971, however, the said Dost Mohd. Atamohd Khan continued to

remain in possession of the said property. The said Dost Atamohd Khan expired on 25th February, 2000, leaving behind his widow and two sons i.e. Yasin Khan, who is Defendant No.2, and Abdul Quaiyum Khan, who was the husband of Plaintiff No.1 and father of Plaintiff Nos.2 and 3 and two daughters i.e. Eshrat Shaikh and Hasina Khan, Defendant Nos.2 and 3 herein.

4. It is pleaded that after the demise of Dost Mohd. Atamohd Khan, Abdul Quaiyum Khan was recovering rent from the tenants/occupants and paying the municipal and other taxes. After the demise of Abdul Quaiyum Khan, the Defendant No.2 continued to recover rent of the tenants/occupants of the property and was paying to the Plaintiffs their proportionate share. In January, 2016, the Plaintiffs learnt that the Defendant No.1 i.e. Ajit Developer had filed execution application No.192 of 2025 in the City Civil Court of Bombay for execution of judgment and decree dated 21st September, 2024 passed in S.C. Suit No.6169 of 2005, in which the Plaintiffs were impleaded as judgment-debtor Nos.2B to 2D, as the heirs and the legal representatives of late Abdul Quaiyum Khan.

5. The Plaintiffs caused appearance in the execution

proceedings and obtained certified copies of the paper and proceedings of S.C. Suit No.6169 of 2005. The records revealed that in S.C. Suit No.6169 of 2005 the name of husband of Plaintiff No.1 was wrongly mentioned as Kayum Khan instead of Abdul Quaiyum Khan seeking specific performance of alleged agreement dated 19th January, 1995 alleged to have been executed by late Dost Atamohd Khan in respect of the subject property.

6. It is pleaded that Sharifa Dost Atamohd Khan had expired prior to the institution of the suit i.e. on 20th May, 2002. On 21st January, 2014, the fact of death of Sharifa was pointed out to the Court, pursuant to which the legal heirs of Sharifa were brought on record and husband of the Plaintiff No.1 was impleaded as Defendant No.4A by mentioning his correct name as Abdul Quaiyum Khan. On 23rd January, 2016, Abdul Quaiyum Khan expired and the roznama of 17th November, 2016, reflects that as legal heirs were not brought on record, the suit stands abated against Defendant No.4A i.e. Abdul Quaiyum Khan. Subsequently, decree dated 21st September, 2024 was passed against all the Defendants including late Abdul Quaiyum Khan

granting specific performance of the agreement dated 19th January, 1995.

7. It is pleaded that in the execution application taken out by the Defendant No.1, the name of Kayum @ Quaiyum Khan and Abdul Quaiyum Khan was shown as deleted and though the suit abated the Plaintiffs have been impleaded as the heirs and legal representatives of late Abdul Quaiyum Khan. The Plaintiffs were advised to file comprehensive suit to challenge the legality and validity of the order dated 21st September, 2024, which was confirmed by the Bombay High Court vide order dated 21st February, 2025 in First Appeal No.1841 of 2024 insofar as it affects the Plaintiffs and accordingly the suit came to be filed seeking declaration that in view of the order of abatement dated 17th November, 2016, the judgment and decree dated 21st September, 2024 is not binding on the Plaintiffs.

8. In these proceedings, Notice of Motion No.1580 of 2026 was taken out seeking injunction against the Defendant No.1 from executing the judgment and decree dated 21st September, 2024 passed by the City Civil Court in Suit No.6169 of 2005 and order dated 21st February, 2025 passed by the Bombay High Court and from interfering with the Plaintiffs' possession and for

stay of the execution application No.192 of 2025.

9. The Defendant No.1 in its affidavit-in-reply contended that by agreement for sale dated 19th January, 1995, Dost Atamohd Khan agreed to sell the suit property to the Defendant No.1 for total consideration of Rs.8,51,000/-. During the pendency of Suit No.6169 of 2005, the Defendant No.4A - Abdul Quaiyum Khan expired on 23rd January, 2016 and though the Advocate for Defendant No.1 continuously followed up with the Advocate for deceased to furnish a copy of death certificate and details, no details were furnished and the suit abated against Defendant No.4A i.e. Abdul Quaiyum Khan. It was contended that the suit was decreed on 21st September, 2024 which was challenged by the Defendants before the High Court by filing First Appeal No.1841 of 2024, which came to be dismissed and the prayer for stay of the order was also rejected and therefore, the decree has attained finality. The review petition filed by the Defendants also came to be rejected on 13th January, 2026. It was pleaded that the Plaintiffs had voluntarily chosen not to bring on record the heirs of deceased Abdul Quaiyum Khan and cannot avoid the decree in Suit No.6169 of 2005.

10. It was pleaded that subsequently the Defendant No.1 applied for fresh property card in respect of the suit property on the basis of the decree and discovered the names of the Plaintiffs as heirs of Abdul Quaiyum Khan and hence, they were joined in the execution application.

11. By the impugned order dated 6th May, 2026, the Trial Court observed that the Plaintiffs had specifically pressed for stay to the execution application. The Trial Court noted the contention, that Defendants had not engaged any Advocate and inapplicability of Section 47 of the Code of Civil Procedure, 1908 (for short, "**CPC**") as the suit had abated and the Plaintiffs are not parties to the proceedings. The Trial Court held that there is no dispute that the Defendant No.1 had deposited the amount of consideration including share of Defendant No.4A and in the execution proceedings, no objection has been raised. Considering the provisions of Section 47 read with Order XXI Rule 97 to 102 of CPC, the Trial Court held that all questions relating to execution are required to be dealt with by the executing court and not by a separate suit. It held that under the provisions of Section 47(3) of the CPC, the question as to

whether any person is representative or not is also required to be decided by the executing court.

12. The Trial Court opined that admittedly the legal heirs of the Defendant No.4 were not brought on record and therefore, the decree is not binding on them, however, the issue is required to be raised before the executing Court and not by way of a separate suit. It further noted the provisions of Order XXII Rule 10A of CPC to hold that the Advocate for Defendant No.4 had not informed and performed his duty but it is the Defendant No.1, who issued the notice and asked for details and in the absence of any details, the legal heirs could not be brought on record. It opined that the Plaintiffs being the legal heirs or even considering an independent title-holder can raise their objections and questions regarding their title and interest in execution proceedings and not by way of a separate suit and rejected the notice of motion.

13. Mr. Prabhavalkar, learned counsel appearing for the Appellants would submit that the provisions of Section 47 of CPC will not apply as the Plaintiffs were not parties to the suit. He would submit that neither Order XXI Rule 97 of CPC would

apply as the Plaintiffs have not obstructed the execution of the decree and the decree holder has not taken out any application. He would submit that by way of fresh suit it is permissible to seek stay of execution of decree. He would draw attention of the Court to the roznama to show that Defendant No.4A had not engaged Advocate and that the roznama of 17th November, 2016 records abatement *qua* Defendant No.4A. He would further submit that the notice addressed on 13th June, 2017 to one Advocate Kunal Cheema asking for death certificate of the deceased Defendant No.4A was addressed after the order of abatement and the Advocate was not engaged by Defendant No.4A.

14. He submits that the Trial Court proceeded on the basis that the information about legal heirs was not given to the Court as well as the Defendant no.1, which is contrary to the roznama of 20th July, 2016 and roznama dated 17th January, 2016. He submits that suit is maintainable in view of the order of abatement, when an undivided interest in the suit property is claimed in accordance with the Mohammedan Law.

15. He would further submit that the relief sought in the

present suit was that the decree itself is null and void and not binding upon the estate inherited by Plaintiffs and consequential injunction restraining execution of the decree which is *non est* in law. He submits that the cause of action arises by reason of infringement of the Plaintiffs independent civil right which is not a dispute relating to execution and if execution is permitted to be proceeded with, the valuable inherited property will be attached and the suit will be rendered infructuous.

16. *Per contra*, Mr. Kachare, learned counsel appearing for the Respondent No.1 would submit that the provisions of Order XXI Rule 101 of CPC squarely covers the dispute raised and the dispute cannot be agitated by filing a separate suit. He would further submit that Section 47 of CPC is applicable as the Plaintiffs are representatives of a party to the suit. He would draw support from the provisions of Order XXII Rule 4(4) of CPC and would submit that the late Abdul Quaiyum Khan did not file written statement and by reason of the decree of the Trial Court, the judgment was rightly pronounced notwithstanding the death of the Defendant No.4A.

17. Alternatively, he would submit that even if it is held that

the decree is not legal and valid, the remedy is under Section 47 of CPC. He points out that in the plaint, the claim is of undivided right through the deceased Abdul Quaiyum Khan. He submits that in Suit No.6169 of 2005 upon the death of Sharifa Dost, he was again brought on record as a legal heir of defendant No.4A. He would further submit that on 17th November, 2016, the suit stood abated against Defendant No.4A - Abdul Quaiyum Khan in his capacity as legal heir of Sharifa. In support, he relies upon the following decisions:

- (i) ***Balavant N. Viswamitra and Ors. vs. Yadav Sadashiv Mule (deceased by L.Rs.) and Ors.***¹
- (ii) ***Brakewel Automotive Components (India) Private Limited vs. P.R. Selvam Alagappan***²

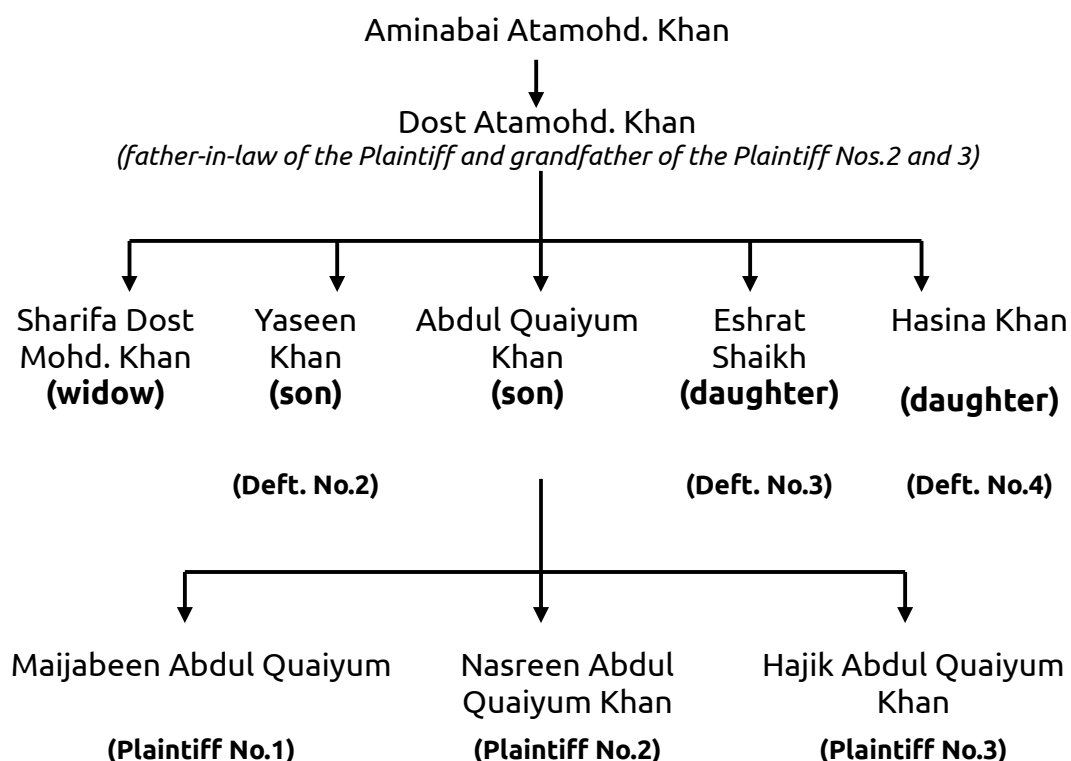
18. In rejoinder, Mr. Prabhavalkar would submit that there is no question of applicability of Order XXII Rule 4(4) of CPC in such a case. He would submit that as the Plaintiffs were impleaded in the execution proceedings, the present suit came to be filed. He submits that the Trial Court has not considered the other prayers sought in the suit.

19. Rival contentions now fall for determination:

¹ AIR 2004 SC 4377

² (2017) 5 SCC 371

20. The genealogy for ease of reference, is as under:



21. Perusal of the pleadings of the plaint in present suit would indicate that the Plaintiffs claim undivided share in the suit property under the Muslim Law of Inheritance upon the death of late Abdul Quaiyum Khan. In order to sustain their right to the undivided share of suit property, the proceedings in Suit No.6169 of 2005 are sought to be assailed as being null and void and not binding on the Plaintiffs. It is evident that as the decree in suit No.6169 of 2005 is passed against the deceased late Abdul Quaiyum Khan, rightly or wrongly, without a challenge to the said decree, the relief sought in the present suit cannot be

granted. Pertinently, the suit does not seek declaration of the Plaintiffs' undivided right, title and interest in the suit property and the substantive prayer is for declaration that the judgment in Suit No.6169 of 2005 is null and void. The prayer for protection of possession is a prayer ancillary to the declaration in respect of the judgment in Suit No.6169 of 2005. The frame of the suit would make it evident that the Plaintiffs have mounted a substantial challenge to the decree in Suit No.6169 of 2005 and to the execution proceedings in which the Plaintiffs have been impleaded as legal heirs of late Abdul Quaiyum Khan.

22. The roznama of Suit No.6169 of 2005 would indicate that on 17th November, 2016, the Trial Court has ordered that the suit stands abated against Defendant No.4A i.e. Abdul Quaiyum Khan. There is no dispute about the fact that in Suit No.6169 of 2005, the same person Abdul Quaiyum Khan was impleaded as Kayum Khan and upon the death of his mother i.e. Sharifa, he was also impleaded as Defendant No.4A i.e. Abdul Quaiyum Khan. The order of abatement would be against Defendant No.2 and Defendant No.4A being one and the same person.

23. The judgment in Suit No.6169 of 2005 indicates that no

written statement was filed by the deceased Abdul Quaiyum Khan either in his capacity as Defendant No.2 or as Defendant No.4A as legal heir of Sharifa. The reliance placed on Order XXII Rule 4(4) of CPC by Mr.Kachare cannot be accepted for the reason that the said provision would apply when the Court exempts the Plaintiffs from the necessity of substituting the legal representatives of the Defendant, who has failed to file the written statement and it is only in such an eventuality that even the death of the Defendant will not preclude the Trial Court from pronouncing the judgment. In the present case, there is no order of the Trial Court exempting the Plaintiffs from substituting the legal representatives of the late Abdul Quaiyum Khan and in fact, the proceedings have abated against the deceased late Abdul Quaiyum Khan. Despite the order of abatement, the judgment and decree is passed against late Abdul Quaiyum Khan in Suit No.6169 of 2005.

24. In execution proceedings taken out for executing the decree in Suit No.6169 of 2005, the Plaintiffs were impleaded as parties in their capacity as legal heirs of late Abdul Quaiyum Khan and have thereafter filed the present suit which seeks the

substantive relief of the decree being nullity *qua* late Abdul Quaiyum Khan for the reason that the suit has abated against him. The final reliefs sought in the plaint is a frontal challenge to the judgment and decree in Suit No.6169 of 2005 and to the execution proceedings. The interim reliefs sought by the Plaintiffs are (a) restraint order against Defendant No.1 from executing the judgment and order dated 21st September, 2024 passed in Suit No.6169 of 2005 and order dated 21st February, 2005 passed by the High Court, (b) restraint order against the Defendant No.1 from interfering with the Plaintiffs' possession, (c) stay to the execution application No. 192 of 2025. The issue is whether in subsequent suit the decree of previous suit can be challenged and whether execution can be stayed. In this context, Section 47 of the CPC and Order XXI Rule 101 are relevant, which reads 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.

* * * * *

(3) Where a question arises as to whether any person is or is not the representative of a party, such 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.”

“101. Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

25. The provisions of Section 47 of CPC provides that not only the parties to suit but even their representatives can agitate all questions relating to execution before executing Court. The question as in the present case whether the Plaintiffs can be said to be representative of party to the suit for execution to follow is also a question to be decided within the ambit of Section 47 as

the issue is whether the decree is nullity *qua* the deceased Abdul Quaiyum Khan.

26. The provisions of Order XXI Rule 101 provides that all questions including questions relating to right, title or interest in the property, arising between the parties to the proceedings or their representatives, shall be determined by the Court dealing with the application and not by way of a separate suit. Even accepting for the moment, the contention of Mr. Prabhavalkar, Section 47 uses the expression "questions arising between the parties to the suit", the provisions of Order XXI Rule 101 substitutes the word, "suit" with the word "proceeding" relating to an application under Rule 97 or Rule 99 of Order XXI of CPC. Order XXI Rule 97 speaks of resistance or obstruction to possession of immovable property, and reads as under:

"97. Resistance or obstruction to possession of immovable property.—(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

27. The contention of Mr. Prabhavalkar that there is no application filed under Order XXI Rule 97 and therefore, the said provisions will not apply is misplaced as the present suit is in effect, nothing but an application for resisting or causing obstruction to the possession of the immovable property sought by Defendant No.1 in execution proceeding. The plaint seeks a specific prayer of injunction against the Defendant No.1 from interfering with the Plaintiffs' possession of the suit property which is constitutes an application under Order XXI Rule 97 of CPC. The provisions of Order XXI Rule 97 takes into account, a situation where resistance to possession is offered by even a person who claims to be in possession in his or her own right and independently of the judgment-debtor, which right is required to be determined under the provisions of Order XXI Rule 101 of CPC.

28. In the case of ***Noorduddin vs. Dr. K.L. Anand***³, it has been held in paragraph 8, as under :

"8. 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

³ 1995 SCC (1) 242

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."

29. It is a well settled proposition of law that the provisions of Order XXI Rule 97 would enable the executing court to adjudicate the independent undivided right claimed by the Plaintiff and the claim in the suit property, the decree being nullity by reason of abatement of suit stood *qua* late Abdul Quaiyum Khan. This determination cannot be by way of a separate suit and is required to be adjudicated by the executing Court.

30. In the case of ***Brakewel Automotive Components (India) Private Limited vs. P.R. Selvam Alagappan*** (supra), the Hon'ble Apex Court noted the decision in the case of ***Vasudev***

Dhanjibhai Modi vs. Rajabhai Abdul Rehman⁴ which held as under:

"7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representative on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when a decree is made by a court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction."

31. It is reiterated that in exercise of powers under Section 47 of CPC, an executing court can allow objection to the executability of the decree, if the same is found to be a nullity.

32. In the present case, as there is a specific challenge to the validity of the judgment and order of Suit No.6169 of 2005 in light of the order of abatement dated 17th November, 2016, the objection is that decree is a nullity and as execution has been filed, it is the executing court which is required to determine all

4 (1970) 1 SCC 670

such issues.

33. In the case of *Asgar and Ors. vs. Mohan Verma and Ors.*⁵ the Hon'ble Apex Court noted the decision in the case of *Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal*⁶ which held that the provisions of Order XXI Rule 97 of CPC provides a statutory remedy both to the decree-holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the executing court and a separate suit would be barred with a view to see that multiplicity of proceedings and parallel proceedings are avoided. It held that Order XXI Rules 97 to 103 would remain a complete Code and the sole remedy for the concerned parties to have their grievances once and for all finally resolved in execution proceedings.

34. It further noted the decision of the Hon'ble Apex Court in the case of *Shrinath and Anr. vs. Rajesh and Ors.*⁷ which has interpreted the expression "any person" in Rule 97 of Order XXI to hold that the same would include all persons resisting the delivery of possession, claiming right in the property, even those

⁵ (2020) 16 SCC 230

⁶ AIR 1997 SCC 856

⁷ AIR 1998 SC 1827

not bound by the decree, including tenants or other persons claiming right on their own, including a stranger.

35. The enunciation of law is therefore clear that even a third party is required to adopt the course of Order XXI Rule 97 of CPC while resisting or obstructing the possession of immovable property which is precisely one of the substantive claim by the Plaintiffs in the present case.

36. The issues sought to be raised by the Plaintiffs by way of a separate suit are required to be raised by an application under Order XXI Rule 97 before the executing court. The Civil Court in the present suit is not competent to adjudicate upon the validity of the right, title and interest of the subject property which was the subject matter of a decree in Suit No.6169 of 2005. The Trial Court has rightly noted the provisions of Section 47 of CPC. As the statutory provisions of Section 47 and Order XXI Rule 97 and 101 would vest the powers in executing court to decide the question of undivided right, title and interest of the Plaintiffs in the subject property. The Trial Court has rightly dismissed the notice of motion.

37. In light of the above, the Trial Court was right in rejecting

the notice of motion which sought a stay of the executing proceedings. There is no merit in the Appeal. Resultantly, Appeal fails and stands dismissed. Civil/Interim Application does not survive for consideration and stands disposed of.

[Sharmila U. Deshmukh, J.]