

**S.A.No.562/2011**

**04.09.2014**

Shri Dinesh Upadhyay, learned counsel for the appellant.

This second appeal is directed against the judgment dated 30.3.2011 passed in Civil Appeal No.9-A/2010 by the I Additional District Judge Sehore, affirming the order dated 27.4.2010 passed in Execution Case No.4/2010 by the II Additional Judge to the Court of Civil Judge Class-I, Sehore.

In fact, a suit for eviction was filed by the respondents No. 1 and 2/plaintiffs against one of the legal representatives of the original tenant. The said suit was decreed. When the decree was put for execution, an objection under Order 21 Rule 97 read with Rule 105 and Section 47 of the Code of Civil Procedure was filed stating that the objector was not a party to the litigation and, therefore, decree of eviction granted in the said suit would not be executable against him. Such an objection was rejected against which an appeal was preferred, the same was also dismissed. Hence, this second appeal.

It is contended by learned counsel for the appellant that when the suit was filed, it was against only one legal representative of the original tenant and not against the others. However, the fact remains that the original tenant died and was succeeded by the appellant as also by other legal representatives jointly. If the partition of the property of the original tenant was done between the members of the family, there was no question of partition of tenancy as the same remained joint. In view of this, the decree of eviction passed against the legal representatives of the original tenant was executable and hence such an objection if rejected by the two

Courts below cannot be said to be improper or illegal. This view gets support from the decision in the case of ***Shambhudayal Vs. Suleman (1978 MPLJ 541)*** as also in the case of ***Kanhaiyalal Vs. Shriram Singh (1991 JLJ 119)***. The Apex Court has also considered these aspects in some of the cases.

In view of the aforesaid, there is no substance in the appeal. No question of law arises for consideration in this appeal, which fails and is hereby dismissed.

**(K.K.Trivedi)**  
**Judge**

A.Praj.