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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.39 OF 2017
WITH
INTERIM APPLICATION NO.30272 OF 2022
WITH
CIVIL APPLICATION NO.68 OF 2017**

Shri. Ashok Laxman Bagul & Anr. ...Appellants
Versus
Shri. Ramchandra Motilal Mutha & Ors. ...Respondents

Mr. Kuldeep Patil a/w. Mr. Nikhil G. Hire, Ms. Saili Dhuru and Mr. Soham Pawar, for the Appellants.

Mr. Ashwin Shete, Mr. Abhay Dhadiwal, Ms. Vidhi Karia, i/b. Jayakar & Partners, for Respondent No.1.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 27th MARCH 2023**

P.C. :

1. Heard Mr. Kuldeep Patil, learned counsel appearing for the Appellants and Mr. Ashwin Shete, learned counsel appearing for Respondent No.1.
2. Mr. Patil submitted that the following substantial question of law is involved in this Second Appeal:-

“Whether the finding of the learned Executing Court as well as the learned First Appellate Court, that the

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Appellants are not the bonafide purchasers and therefore, not protected under Section 19(b) of the Specific Relief Act, is legal and in accordance with the evidence on record?”

3. Before considering the substantial question of law raised by Mr. Kuldeep Patil, learned counsel appearing for the Appellants, it is necessary to set out the factual position:-

i. Mr. Ramchandra Mavji Patil was the original owner of the suit property bearing Gat No.329 situate at village Tehre, Tal. Malegaon, Dist. Nashik.

ii. An Agreement to Sale was executed between said original owner and Respondent No.1 on 13th April 1981.

iii. The Respondent No.1 filed Special Civil Suit No.35 of 1982 on 24th February 1982 seeking specific performance of said Agreement dated 13th April 1981.

iv. On 23rd August 1985, the said suit was partly allowed by directing refund of the earnest amount with interest. However, prayer for specific performance was rejected.

v. The original Plaintiff challenged the said decree by filing First Appeal in this Court. Thereafter due to

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increase in the pecuniary jurisdiction, the appeal filed in the High Court in 1985 was transferred to the Court of Additional District Judge, Malegaon and renumbered as Civil Appeal No.98 of 2001.

vi. During the pendency of the First Appeal before the High Court (before remand to the District Court, Malegaon) on 11th December 1996, the legal heirs of original owner-Ramchandra Mavji Patil sold the property to one Ms. Nathbai Umarshi Shah. Despite filing an undertaking before the Court and despite pendency of the appeal, said Nathbai Umarshi Shah sold the property to one Mr. Rajendra Karbhari Pawar. Therefore, Respondent No.1 filed Contempt Proceedings being Civil Miscellaneous Application No.14 of 2008 against Nathbai Umarshi Shah and others including said Rajendra Karbhari Pawar.

vii. The said Civil Appeal No.98 of 2001 was allowed on 15th October 2001 and decree of specific performance was passed.

viii. The Respondent No.1 filed Darkhast bearing No.5

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of 2002 on 21st January 2002 seeking execution of the Judgment and Decree dated 15th October 2001 passed by the learned First Appellate Court.

ix. Legal heirs of original owner-Ramchandra Mavji Patil filed Second Appeal No.199 of 2003 and the said Second Appeal was dismissed by a learned Single Judge of this Court by order dated 27th March 2003.

x. The said order dated 27th March 2003 of a learned Single Judge was challenged by filing SLP by heirs of original owner-Ramchandra Mavaji Patil. However, the said SLP was also dismissed by the Supreme Court.

xi. The legal heirs of said original owner-deceased Ramchandra Mavji Patil and said Mr. Nathbai Umarshi Shah filed a fresh suit bearing No.287 of 2001 before the Civil Judge, Junior Division, Malegaon for declaration that said Agreement to sell dated 13th April 1981 and decree passed in Special Civil Suit No.35 of 1982 and Civil Appeal No.98 of 2001 are not binding on the share of the Plaintiffs. The said suit was dismissed on 14th March 2006 inter alia on the ground of the constructive

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res-juricata. The Regular Civil Appeal No.31 of 2006 filed by them was dismissed by the Judgment and Decree dated 27th September 2012 passed by the learned Ad-hoc District & Additional Sessions Judge, Malegaon. Said Nathbai Umarshi Shah filed Second Appeal No.582 of 2013 challenging order dated 27th September 2012 passed in Civil Appeal No.31 of 2006 and said Second Appeal No.582 of 2013 was withdrawn before the High Court on 29th April 2013. The legal heirs of original owner-Ramchandra Mavji Pawar also filed Second Appeal No.882 of 2013 challenging the legality of said Judgment and Decree dated 27th September 2012 passed in Civil Appeal No.31 of 2006 and the same was dismissed by the learned Single Judge by order dated 2nd August 2013. The present Appellants filed separate Second Appeal (ST) No.17623 of 2013 challenging the order dated 27th September 2012 passed by learned Civil Judge, Junior Division, Malegaon in Civil Appeal No.31 of 2006. The said Second Appeal was subsequently withdrawn on 19th November 2014.

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xii. In the meanwhile, on 19th October 2007, Lis-Pendence Notice was registered by Respondent No.1 and accordingly on 22nd October 2007, Mutation Entry No.1570 was recorded in the revenue record.

xiii. In the meantime, on 18th October 2012, Mr. Rajendra Karbhari Pawar illegally sold the said property to present Appellants i.e. Ashok Laxman Bagul and Ravindra Laxman Bagul.

xiv. The learned Civil Judge, Junior Division, Malegaon in Contempt Proceedings being Civil Miscellaneous Application No.14 of 2008 by order dated 29th January 2003 held that Nathbai Umarshi Shah breached the undertaking. As said Nathbai Umarshi Shah has tendered unconditional apology and as she was 80 years old, her unconditional apology was accepted subject to the cost of Rs.7,000/-, failing which, simple imprisonment for one month was ordered.

xv. In the meantime, Respondent No.1 filed application bearing Exhibit-81 in Darkhast No.5 of 2002 for appointing the Commissioner for executing the Sale

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Deed of the said property in his favour and getting the same registered. Accordingly, on 4th May 2013 learned Civil Judge, Junior Division, Malegaon passed an order below Exhibit-81 appointing the Court Commissioner with the direction to execute the Sale Deed with respect to the said property in favour of the Respondent No.1.

xvi. Accordingly, Sale Deed was executed and registered on 13th June 2013 and transaction was mutated vide Mutation Entry No.2279 on 17th June 2013.

xvii. The possession of the said property was handed over to the Respondent No.1 on 2nd August 2013 in the presence of Panchas and Police Patil.

xviii. The Appellants filed an objection bearing Exhibit-96 in Darkhast No.5 of 2002 and the same was subsequently withdrawn on 30th April 2013.

xix. In the meanwhile, on 30th July 2013, the present Appellants filed application bearing Exhibit-114 in Darkhast No.5 of 2002 obstructing the execution of the decree.

xx. Learned Civil Judge, Junior Division, Malegaon

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directed obstructionist to lead evidence and directed that possession be handed over to the obstructionist till the disposal of the application. Accordingly, the possession was restored back to the Appellants.

xxi. Being aggrieved by said order dated 18th February 2014 the Respondent No.1 filed Civil Revision Application in this Court and a learned Single Judge of this Court by order dated 29th April 2014 stayed said order of handing over possession to the obstructionists i.e. present Appellants and accordingly, the possession was restored back to the Respondent No.1.

xxii. Learned Executing Court by impugned order dated 30th July 2015 dismissed the application bearing Exhibit-114 filed by the Appellants.

xxiii. The Appellants challenged the said Judgment and Decree dated 30th July 2015 by filing Civil Appeal No.100 of 2015 before the learned District Judge, Malegaon. Learned District Judge, Malegaon by impugned Judgment and Decree dated 14th November 2016, dismissed the said appeal.

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4. By way of present Second Appeal, the Appellants are challenging the aforesaid Judgment and Decree dated 30th July 2015 passed by the learned Executing Court and the Judgment and Decree dated 14th November 2016 passed by the learned First Appellate Court. Both the Courts have recorded the concurrent finding that Appellants i.e. obstructionists are not the bonafide purchaser for value without notice. The reasoning given by the learned First Appellate Court is to be found in paragraphs 7 to 13. The same read as follows:-

“7/- Before coming to the merits of the case, some undisputed facts needs to be mentioned here. The trial Court has refused the claim of specific performance but allowed by the Appellate Court is not disputed. Similarly, the different transactions that had taken place during pendency of the litigation is also not disputed. **It is also undisputed that Smt. Nathabai Umarsi was held responsible for committing breach of her own undertaking and the order remained unchallenged.** The only point to be considered as to whether the obstructionists are bonafide purchaser of the suit property for value without notice. It is necessary to mention here that whenever third party approaches the Court with a ground that he was not aware about the previous

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transaction between the parties or the previous litigation, heavy burden lies on him to prove that the entire transaction was honest and he was not at all aware of previous events. The bonafide purchaser has to show that the property which he has purchased was in good faith for value without notice of original contract between the person in actual possession and owner of the suit property. Unless and until, he establishes that the purchase was made after proper enquiry, he cannot establish his bonafides. In this regard, it is necessary to consider the scope of Section 19(b) of the Specific Relief Act. Section 19(b) of the Specific Relief Act reads as follows.

“S.19(b) - any other person claiming under him by title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract.”

8/- The bare reading of the rules makes it very clear that this rule is based on justice equity and good conscience. The rule is an exception to the general law about the purchase of immovable property. Section 19(1)(b) of the Specific Relief Act lays down a general rule that the original contract may be specifically enforced against the subsequent transferee but allows an exception to that general rule, not to the transferor but to the transferee, and

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therefore, it is for the transferee to establish the circumstances which will allow him to retain the benefit of transfer which prima facie he had no right to get. Thus, the subsequent purchaser has to prove exception under 19(b) and to establish that he is a bonafide purchaser for value without notice of the contract. The third party purchaser purchasing a property despite existence of an agreement with another, has to prove by cogent evidence that he is a bonafide purchaser for consideration without notice. Now let us see what is the evidence is brought by the obstructionists in order to establish their claim.

9/- The obstructionists no.1 has adduced the evidence before the Executing Court wherein he stated that he came to know that Rajendra Karbhari owns the suit property and therefore, he verified the suit property and come to the conclusion that it will be suitable for him and therefore, he went to Talathi Office, verified the documents and also issued public notice in news paper thereby calling objections of the general public. He further urged that when no objection was received, got registered the sale deed on 18.10.2012 before Sub Registrar Office and also got mutated in the revenue record. He has also urged that suit property was also mutated in the name of Smt. Shaha Nathabai Umarsi in 2007, the

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vendor of Rajendra Karbhari. He specifically states that the obstructionists have purchased the suit property in good faith. It is also deposed by him that Rajendra Karbhari Pawar has not stated anything and therefore, there was no reason for them to know about the previous litigation. During evidence, the witness has proved the notice issued through Advocate Gite (Exh.149), paper notice (Exh.150), sale deed (Exh.151) and 7/12 extracts (Exh.152 & 153).

10/- **The cross examination of this witness is very significant. He has admitted that he has not made any enquiry from Sub Registrar Office about the suit property. Similarly, he further admits that after the sale deed, he came to know that fine was imposed on Nathabai but he has never asked his Advocate as to whether Nathabai was penalised. Further he admits that in the execution petition, he was represented by Adv. L.B.Kulkarni but he has not made any enquiry with him in respect of litigation. It is very significant and relevant to note that Mr.L.B.Kularni, Advocate is the same person who has represented all the non applicants including Nathabai in the Civil Miscll. Application No. 14/2008 wherein Natahabai was held responsible for committing the breach of her own undertaking and penalised with the fine of Rs.7,000/. When this particular question was asked**

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to the witness, he admits that he later on came to know and very bluntly answered that his Advocate replied him that he will collect information later on, but Mr. L.B.Kulkarni has never collected information about the fact of penalising Nathabai. He further admits that he has not issued any title verification notice of his own ownership in the news paper. He admits that he has filed Writ Petition No.17719/2013 before the Hon'ble Bombay High Court against the order of the Dist. Court but in the next breath he said that he do not know as to what happened to the Judgment of the Appellate Court in Regular Civil Appeal No. 31/2006 delivered on 27.09.2012.

11/- Another significant circumstance in this matter is about the lispendence. It is clear from the record that when the litigation was going on, the Decree Holder has registered a notice of lispendence with Sub Registrar and informed Talathi also about the registration of notice of lispendence. This entry is at Sr. No.1570. The said entry appears to have been recorded on 22.10.2007. If we see this entry minutely, it appears that Decree Holder has registered the notice of lispendence in the office of Sub Registrar and then entry no.,1576 was entered by the obstructionists. However, the lispendence entry no.1570 was illegally cancelled. When the

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entry of 1570 was not finalised in respect of suit property, there was no reason for the Talathi concerned to record entry no.1576 unless and until the pendency entry no.1570 is disposed off. The conduct of Circle Inspector is highly suspicious and the Executing Court has made certain observation in the order.

12/- Thus, the evidence which came on record is contradictory to what is pleaded by the obstructionists and it has to be decided as to whether it is acceptable. The learned counsel for the obstructionists contended that onus on the obstructionists in this regard is very light and they have already discharged it when they entered into the witness box and stated that they had no knowledge about the previous litigations. I am unable to agree with him that in the circumstances of this case, the burden is very light. **First of all the parties who are residence and have also their residential houses in the same vicinity and in place like this, it is not probable that the obstructionists would not come to know about the execution of agreement of sale of the plaintiff and various litigations he went through. Secondly the haste in which sale deed in favour of obstructionists was executed is also unusual. It is more unusual for not executing the agreement in such cases. It appears**

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that the title verification notice was executed on 20.09.2012, publication of notice calling objection in news paper is of 05.10.2012 and the sale deed was executed on 18.10.2012. For some reasons the obstructionists appears to be in hurry to get the sale deed registered.

13/- It is also admitted by the obstructionists that he has made enquiry in the Talathi Office and certainly he must be aware about the entry no.1570. There is absolutely no explanation as to why he has not taken any objection in this regard. In view of these circumstances, it is clear that the obstructionists are not bonafide purchaser for value without notice.”

(Emphasis added)

5. The learned Executing Court has also given the cogent reasons for coming to the conclusion that the Circle Officer has illegally cancelled the Mutation Entry No.1570 by making false endorsement. The learned Executing Court has held that notice of Lis-Pendence was registered and it was subsisting and it's effect cannot come to an end merely on the ground of lapse of certain period. The Appellate Court has considered the aspect that Advocate Mr. N. B. Kulkarni also represented said Nathbai

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Umarshi Shah who has purchased the property on 11th December 1996 from the legal heirs of said original owner-Ramchandra Mavji Patil and said Nathbai gave undertaking to the Court that property would not be sold during the pendency of the proceedings and inspite of that, illegally sold the property to Mr. Rajendra Karbhari Pawar and said Rajendra Karbhari Pawar sold the same to the present Appellants/obstructionists. Therefore, no illegality or perversity can be found in the finding of the learned Executing Court and the learned First Appellate Court that the Appellants are not the bonafide purchaser, without notice of the original contract.

6. Therefore, there is no substance in the substantial question of law raised by Mr. Patil.

7. For the above reasons, the Second Appeal is dismissed with costs.

8. In view of the dismissal of the Second Appeal, nothing survives in the Interim Application and the same is also dismissed.

[MADHAV J. JAMDAR, J.]