

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

WRIT PETITION NO.3343 OF 2015

(Charan Singh s/o Sompal Mathuria and others ..vs.. Hifzul Kabir s/o Hifzul Karim and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 21-07-2015

Heard Dr. R.S. Sundaram, learned Advocate for the petitioners, Shri Masood Sharif, learned Advocate for the respondent No.1 and Shri A.M. Ghare, learned Advocate for the respondent Nos.4 and 5.

2. Apart from the fact that the matter has a chequered history, the present petition is nothing but gross abuse of the process of law.

3. Bhalchandra Nageshrao Joshi, Hifzul Kabir, S.G. Wakhare, B.D. Thote, Abdul Karim, Sayed Shafique Ahmad and N.A. Bakshi filed Special Civil Suit No.263/1985 against five defendants, praying for decree for specific performance of contract in respect of the suit field admeasuring 18.07 acres. These plaintiffs had made the alternate prayer for refund of the amount paid by them and for damages. The learned trial Judge, by the judgment dated 17-09-1991, dismissed the civil suit. The original seven plaintiffs filed First Appeal No.790/1991 before this Court. Cross-objection was also

filed. The original defendant No.1-Shri Santoshrao Peeraji Bhongade died and his legal representatives (respondent Nos.2, 3, 4 and 5) were brought on the record. The First Appeal came to be allowed. This Court, by the judgment dated 26-04-1993 decreed the civil suit in the following terms :

“In the result, the appeal is allowed with costs. The impugned judgment and decree are set aside. The cross-objection is also dismissed. The decree be drawn up in the following terms :

(a) The suit filed by the plaintiffs on behalf of themselves and defendant Nos.2 to 5 for specific performance of the contract for remaining area of 18.07 acres of the suit property is hereby decreed with costs.

(b) The plaintiffs as well as defendant Nos.2 to 5 are directed to deposit the balance consideration in Court after adjusting Rs.10,000/- already paid within six weeks from today.

(c) Upon deposit of the amount the defendant No.1(a) to (d) are directed to execute and register the sale-deed within a month after expiry of six weeks.

(d) On failure of the defendant No.1(a) to (d) to execute the sale-deed as directed, the plaintiffs as well as defendant Nos.2 to 5 shall obtain the sale-deed through Court.

(e) The plaintiffs as well as defendant Nos.2 to 5 be put in possession of the suit property as well.”

4. The judgment and decree passed in First Appeal No.790/1991 was challenged before the Hon'ble

Supreme Court in petition for Special Leave to Appeal No.8944/1993 which was disposed by the order dated 22-3-1995. The Hon'ble Supreme Court maintained the decree for specific performance of contract in respect of 18.07 acres of suit field.

5. The present petitioners (Charan Singh, Smt. Babitai, Kumari Sheetal and Kumari Chanchal) filed Special Darkhast No.118/95 for execution of the decree.

The present respondent No.1/Hifzul Kabir filed Special Darkhast No.156/1995 for execution of the decree.

6. The present petitioners claim to be interested in the suit field in dual capacity. One of the claim of the present petitioners is that they have purchased 5.50 acres of field by sale-deed registered on 17-11-1995 by the judgment-debtors. Simultaneously, the claim of the present petitioners is that the decree-holders (original plaintiff Nos.1 and 3 to 7) had assigned their right, title and interest in their favour. The executing Court took up both the execution proceedings simultaneously. The present petitioners as also the judgment-debtors filed objections in Special Darkhast No.156/1995. The executing Court, by the order dated 21-08-2009, dismissed Special Darkhast No.118/1995 filed by the present petitioners. By the same order, the executing Court directed that Special Darkhast No.156/1995 filed

by the respondent No.1 to proceed further.

The order passed by the executing Court on 21-08-2009 was challenged before this Court by the judgment-debtors and also the present petitioners in Writ Petition No.113/2010, Writ Petition No.1691/2010 and Civil Revision Application No.76/2009. This Court decided above three matters by the common judgment dated 06-01-2011. After exhaustively dealing with all the points, this Court dismissed all the three matters. The judgment passed by this Court came to be challenged in petition for Special Leave to Appeal (Civil) Nos.11926-11928/2011 which were dismissed in limine on 01-08-2011.

7. After the dismissal of the special leave petitions, the present petitioners filed objection (Exh.246) in the Special Darkhast No.156/1995, on 06-08-2011. In substance, the petitioners had taken the objection that the sale-deed in respect of 5.50 acres of field having been executed by the judgment-debtors in favour of the present petitioners, the draft sale-deed as given on behalf of the respondent No.1 cannot be accepted.

Similar objection came to be raised by the judgment-debtors.

The executing Court, by the impugned order, has rejected the above objection. Hence, the present writ

petition.

8. Dr. R.S. Sundaram, learned Advocate for the petitioners has submitted that the petitioners have become owners of 5.50 acres of field out of the suit field as per the sale-deed registered in their favour on 17-11-1995 and unless the sale-deed is challenged in appropriate proceedings, the executing Court cannot register the sale-deed of entire 18.07 acres of field in favour of the respondent No.1. It is further submitted that the present petitioners are assignees of the interest and title of the original plaintiff Nos.1 and 3 to 7 and therefore, the sale-deed of 18-07 acres of field cannot be registered in favour of the respondent No.1 alone. It is submitted that the executing Court has failed to consider the objections of the petitioners properly and therefore, the impugned order is not sustainable in law and has to be set aside.

9. Shri Masood Sharif, learned Advocate for the respondent No.1 has submitted that the petition is required to be dismissed as the petitioners have suppressed relevant and material facts and documents from this Court. The learned Advocate has pointed out the judgment passed by this Court in Writ Petition No.113/2010 and connected matters and the order passed by the Hon'ble Supreme Court dismissing the special leave petition. The learned Advocate has

submitted that the petitioners have deliberately kept back these and have not filed these alongwith the petition. It is argued that this Court while deciding Writ Petition No.113/2010 and other connected matters has exhaustively dealt with all the objections raised on behalf of the petitioners and the judgment-debtors and it is not open to the petitioners to agitate the same objections again. It is prayed that the petition be dismissed with exemplary costs.

10. After considering the submissions made by the respective parties and examining the documents filed on the record of the writ petition, I find that the claim of the petitioners in the objection (Exhibit 246) before the executing Court was that the petitioners are the owners of 5.50 acres of field out of 18.07 acres of field as per the sale-deed registered by the then owners in their favour and therefore, the sale-deed for the entire 18.07 acres of field cannot be registered in favour of the respondent No.1. The other objection is that the executing Court has not considered that the deed of assignment dated 27-04-1993 does not confer legal right in favour of the respondent No.1 to get the sale-deed in respect of 18.07 acres of land. This Court while deciding Writ Petition No.113/2010 and other connected matters has exhaustively dealt with the objections as are being raised on behalf of the petitioners and rejected them. The Special Leave Petition filed against the judgment passed

by this Court is also dismissed. In these facts, in my opinion, it is not open to the petitioners to re-agitate the same objection again.

11. In para No.39 of the judgment given in Writ Petition No.113/2010 and connected matters, this Court has held that the respondent No.1-Hifzul Kabir is entitled to seek the specific performance of contract on the basis of the deed (Exh.No.178)

12. The other submission made on behalf of the petitioners is that the sale-deed in respect of entire 18.07 acres of field cannot be executed in favour of the respondent No.1 alone, I find that such objection has not raised by the petitioners before the executing Court. The learned Advocate for the petitioners has submitted that the petitioners are entitled to agitate this objection before this Court in the petition also as all the relevant material is on the record and the objection can be dealt with on the basis of the material which is already available on the record. In the alternative, it is submitted that the petitioners be granted liberty to file appropriate application before the executing Court raising the objection in this regards.

As observed above, the entitlement of the petitioners in the capacity of assignees of the original plaintiff Nos.1 and 3 to 7 has been considered by the

executing Court in the order passed on 21-08-2009. Again this objection is considered by this Court while deciding Writ Petition No.113/2010 and other connected matters. The petitioners cannot be permitted to reopen the issue again. Therefore, the request as made on behalf of the petitioners for grant of liberty cannot be considered. Moreover, the claim of the respondent No.1 that ten decree-holders have assigned their interest and title in favour of the respondent No.1 has been accepted by the executing Court by the order dated 21-08-2009 which is maintained by this Court in Writ Petition No.113/2010 and other connected matters and the Special Leave Petitions challenging the judgment passed by this Court in Writ Petition No.113/2010 and other connected matters have also been dismissed.

13. In view of the above, I find that the impugned order is proper and based on appreciation of the material on the record. I see no reason to interfere with the impugned order. The writ petition is dismissed.

Considering the facts as recorded above, it is clear that the present petitioners and the original judgment-debtors, in collusion, are protracting the matter and delaying the execution by raising frivolous and untenable objections. The petitioners are liable to pay exemplary costs of Rs.25,000/- to the respondent No.1. The costs shall be paid by demand draft within

one month and receipt shall be produced on the record of the executing Court.

JUDGE

pma