

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

SECOND APPEAL NO. 42 OF 2016
WITH
CIVIL APPLICATION NO. 607 OF 2016

Narmadabai Laxman Patil ... Appellant
Versus
Sanjay Babulal Tagwale and others ... Respondents

.....
Mr. Dhorde, for appellant
.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : FEBRUARY 29, 2016

ORDER :

1. Heard Mr. Dhorde for appellant – judgment debtor No.7 challenging order dated 17-01-2007 passed by Executing Court (Civil Judge, Junior Division, Pachora) rejecting her application Exhibit-30 in execution proceedings bearing Regular Darkhast No. 12 of 1999 as confirmed by Principal District Judge, Jalgaon in Regular Civil Appeal No. 62 of 2007 under order dated 26-10-2015.
2. He strenuously urges for consideration of second appeal, having regard to factual scenario that the suit had been instituted by third wife and her daughter seeking partition of the property referred to in Regular Civil Suit No. 24 of 1987.
3. It appears that defendant No.2 – Dhanaji - predecessor of present appellant (present appellant was not a party to the suit

referred to herein above) had alienated a part of the properties in the suit to defendant No.6 Pushpalatabai. During pendency of suit, Dhanaji died. His legal heirs after Dhanaji's death sold certain part of the suit properties to the present appellant. Subsequently, the matter was settled among the parties except defendant No.2 and his legal heirs.

4. The suit was decreed by Civil Judge, Junior Division, Pachora on 01-07-1999, granting 1/5th share to plaintiff No.2, defendants No. 1, 2 (legal heirs 2(i) to 2(x)), 3 and 4 each in the properties described in paragraph No.12 of plaint. Defendant No.1 had been granted grampanchayat house bearing No.1379 of village Pimpalgaon (Hare), taluka Pachora in lieu of his share in the house properties. The sale-deed dated 09-01-1987 executed by defendant No.2 in favour of defendant No.6 had been declared to be null and void.

5. In execution under Regular Darkhast No.12 of 1999, an objection had been raised by some of the defendants purportedly referring to Order XXI Rule 97 of Civil Procedure Code, 1908. It appears that in execution proceedings, present appellant had been impleaded as judgment debtor No.7. Executing court under its order dated 17-01-2007, with reference to the contentions relating to judgment debtor No.7 – present appellant had framed point whether she was a bonafide purchaser without notice and decided it

in the negative, observing that the transaction was during pendency of the suit, no proper enquiry had been made by judgment debtor No.7 nor she had entered into witness box, instead, her husband had been examined. Having regard to the revenue entries, it had been opined by the court that it was incumbent upon appellant – judgment debtor No.7 to have made a proper enquiry before purchasing the property. Court thus held that the purchase cannot be said to be bonafide and without notice. As such, the objection was rejected.

6. Appeal was carried therefrom by appellant bearing Regular Civil Appeal No. 62 of 2007 by present appellant – judgment debtor No.7. The appellate court also framed similar and other relevant points and held under order dated 26-10-2015 that the appellant – judgment debtor No.7 cannot be said to be bonafide purchaser for value without notice.

7. Having regard to the facts which are not disputed, the appellate court considered that the purchase had been made by present appellant during pendency of the suit, evidence on record indicates that appellant had not made proper enquiry before the purchase, the transaction had been entered into by judgment debtor No.7 but she had absented herself from entering into witness box and evidence on her behalf had been led by her husband as general power of attorney holder. With regard to other

contention on behalf of the appellant about executing court not framing proper points, appellate court found that the only point to be considered was whether appellant was a bonafide purchaser for value without notice and that the executing court had framed said point and had accordingly decided the same in the negative. Appellate court held that it cannot be said that the decree in Regular Civil Suit No. 24 of 1987 had been based solely on the settlement between the parties i.e. plaintiffs No. 1 and 2 and defendants No. 1, 3, 4 and 5 and as such, went on to dismiss the appeal, observing further that the executing court gave proper opportunity to the parties to lead evidence. The parties were aware of the point in issue and the executing court had decided the same properly. The appellate court further observed that having regard to observations in writ petition No. 1329 of 2007, the appellant may apply to executing court for working out equities or file a separate suit for recovery of amount of consideration.

8. Having regard to the facts and taking overall view, it cannot be said that there is any substantial question of law involved in the second appeal. Second appeal, as such, stands rejected.

9. In view of disposal of second appeal, civil application does not survive and stands disposed of.

(SUNIL P. DESHMUKH, J.)

sms