

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

WRIT PETITION NO. 8808 OF 2016

Amol Vishwanath Bade

..PETITIONER

VERSUS

Dattatraya Dinkarrao Ghule and Others

..RESPONDENTS

....
Mr. S.D. Kulkarni, Advocate for petitioner.

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**CORAM : T.V. NALAWADE, J.
DATED : 26th SEPTEMBER, 2016**

ORDER :

1. The petition is filed to challenge one order made in Regular Darkhast No. 25 of 2009 which is pending in the Court of Civil Judge, Junior Division, Pathardi, District Ahmednagar. The application filed by the present petitioner under Section 47 of the Code of Civil Procedure for relief of dismissal of execution proceeding is rejected. Heard learned Counsel for petitioner.

2. Regular Civil Suit No. 170 of 1996 was filed by the decree holder for relief of specific performance of contract of sale of immovable property. Agreement was made by Defendant No.2 in favour of the

plaintiff in the year 1993. The suit came to be decreed in the year 2002. In Family Court, there was proceeding between Defendant No.2 and his wife – Jayashree and in that suit Defendant No.2 agreed to give suit property to Jayashree in lieu of maintenance. Accordingly, during the pendency of Suit No. 170 of 1996, sale deed was executed in favour of Jayashree by Defendant No.2 and thereafter in 2008 Jayashree executed sale deed of the said property in favour of the present petitioner. The decree of specific performance was challenged in this Court and the decree was confirmed.

3. In view of the aforesaid circumstances, the executing Court has observed that the pendency of the suit was within the knowledge of Defendant No.2 and his wife – Jayashree, but the property was shown to be given to the wife – Jayashree by Defendant No.2 and then the property was sold to the present petitioner by Jayashree. Sale deed in favour of the petitioner was made after the decree of specific performance had become final.

4. It is the case of the petitioner that he is bonafide purchaser without notice and for valuable consideration. He wants to show to the Court that Defendant No.2 was deceived as his power of attorney did not

properly contest the matter. The petitioner also wants to prove that the power of attorney was cancelled prior to the date of the decision given by the Trial Court and so the decision is not binding on Defendant No.2. All these contentions cannot be considered now as the decision of the suit has become final and this point could have been raised if at all they were there. Present petitioner being purchaser has no more rights than the rights which were available to the original Defendant No.2. The Trial Court has considered the principle of lis pendense and has held that it is not possible to consider the objection of the purchaser from judgment debtor.

5. The learned Counsel for petitioner places reliance on some reported judgments like *Civil Appeal No. 16885 of 1996 (Gangabai Gopaldas Mohata Vs. Fulchand and Others)*, 2009 DGLS(Soft) 367 (*Century Textiles Industries Ltd. Vs. Deepak Jain and Another*), AIR 2004 CALCUTTA 267 (*M/s Saraswat Trading Agency, Award-holder Vs. Union of India and Others*), 2012(4) All M.R. 481 (*A. Nawab John and Others Vs. V.N. Subramaniam*). The learned Counsel submitted that the executing Court has held that the objection itself is not tenable in the eyes of law when the objection ought to have been decided. It can be said that there is observation that objection is not tenable but the

Executing Court has considered the aforesaid circumstances also. As the application filed under Section 47 of the Code of Civil Procedure is rejected by the Executing Court, writ petition is filed against the said decision.

6. In view of the aforesaid circumstances, this Court holds that it is not possible to interfere in the order made by the Executing Court. In any case, there is nothing with the petitioner on the basis of which he can protect the sale deed executed in his favour. In that result, petition stands dismissed.

(T.V. NALAWADE, J.)

SSD