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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL APPLICATION NO.16065/2015

IN

WRIT PETITION NO.6077/2009

Surekha Ankush Sonwane.

...Applicant..

Versus

Shaikh Habib Shaikh Miya & others.

...Respondents...

.....

Shri G.V. Wani, Advocate for applicant.

Shri R.P. Bhumkar, Advocate for respondent nos.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 18.03.2016

ORDER :

1] Shri Wani, learned Advocate for the applicant, submits that the applicant is the purchaser of a property, which was earlier subject matter of a suit before the trial Court. The suit property was purchased by the original vendor. The non-applicants claim to be the erstwhile owners of the suit property. After the original vendor purchased the entire suit property in auction purchase, the applicant has purchased the entire

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property from the said original vendor, which is evidenced by the registered saledeed placed on record. He, therefore, submits that the applicant deserves to be added as a respondent in the pending writ petition.

2] Shri Wani further submits that Writ Petition No.6077/2009 has been admitted by this Court in which the objections raised by the non-applicants herein, who are judgment-debtors, has been rejected by the impugned order dated 13.3.2009 delivered in Miscellaneous Civil Application No.12/1998. By orders of this Court dated 4.12.2009 and which orders have been continued till date, the execution proceedings have now been stayed. Consequentially, this applicant cannot make an application for addition of parties before the executing Court and hence this application.

3] Shri Bhumkar, learned Advocate appearing on behalf of the non-applicants, has opposed the application on the ground that the applicant is a purchaser of the suit property despite the pending litigation. She is not required to be heard. The original vendor is the person concerned with the cause of action and hence the decision with regard to the rights of the original vendor would,

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therefore, bind the applicant. He, therefore, submits that this application be rejected.

4] I have considered the submissions of the learned Advocates as have been recorded hereinabove.

5] In the Miscellaneous Civil Application No.12/1998, which was decided by the learned Civil Judge, Senior Division, Ambajogai, by order dated 13.3.2009, the contentions of the non-applicants herein have been recorded in paragraph no.6 of the said order. The non-applicants herein - judgment debtors herein had contended that once the auction purchaser has sold the disputed property in favour of Surekha Sonwane (applicant herein) vide saledeed dated 17.12.2002, then the auction purchaser has no right to ask for the possession of the disputed field. The applicant herein can put forth her objections, if at all she desires to appear and raise such type of objections before the executing Court.

6] The learned Civil Judge, Senior Division, concluded that the said Surekha Sonwane has a right to appear and raise objections. A clear sale certificate has been issued by the Court in the execution proceedings in favour of the auction purchaser. It was in this backdrop

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that the objections raised by the non-applicants - judgment debtors were rejected.

7] It is thus apparent that statutory documents are before the Court with regard to the property purchased by the auction purchaser and having been sold to the applicant. No loss or harm would be caused to the non-applicants herein if this application is allowed considering the fact that the execution proceedings have been stayed and the applicant would, therefore, be precluded from moving an application before the executing Court.

8] Even going by the contention of the non-applicants that once the auction purchaser has sold the property to the applicant herein, the auction purchaser would have no right to the possession of the disputed field, I am convinced that this application deserves to be allowed.

9] In the light of the above, this application is allowed. The original petitioner shall accordingly array the applicant as a respondent in the cause title of the writ petition within three weeks from today.

(RAVINDRA V. GHUGE, J.)