

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

WRIT PETITION NO.10422 OF 2015

Deelip s/o Ramchandra Shekatkar,
Deceased through his L.Rs.

1(a) Shakuntala Ramchandra Shekatkar
(Deceased)

1(b) Vikram Deelip Shekatkar
and others

... PETITIONERS

VERSUS

Shrirampur Taluka Pragat Bagaitdar
Vividh Karyakari Seva Sahakari Society Ltd.
and others

... RESPONDENTS

.....

Shri N.V. Gaware, Advocate for petitioners
Shri R.N. Dhorde, Senior Counsel with
Shri V.R. Dhorde, Advocate for respondent No.1 to 3

.....

WITH

WRIT PETITION NO.12356 OF 2015

Shrirampur Taluka Pragat Bagaitdar
Vividh Karyakari Seva Sahakari Society Ltd.
and others

... PETITIONER

VERSUS

Deelip s/o Ramchandra Shekatkar,

Deceased through his L.Rs.

1(a) Shakuntala Ramchandra Shekatkar
(Deceased)

1(b) Vikram Deelip Shekatkar
and others

... RESPONDENTS

.....
Shri R.N. Dhorde, Senior Counsel with
Shri R.L. Kute, Advocate for respondent petitioner
Shri N.V. Gaware, Advocate for respondent
.....

CORAM: S.V. GANGAPURWALA, J.

DATED: 23rd March, 2016.

ORAL ORDER :

1. Writ Petition No.10422/2015 is filed by the original defendant/ tenant, who has suffered a decree of eviction and subsequently filed an appeal before the District Court. In the said appeal filed by the defendant/ tenant, third parties filed an application for impleadment as original plaintiff in the suit and respondent in the appeal, on the ground that, during the pendency of the appeal, these third parties / interveners have purchased the suit property vide registered sale deed from the plaintiff on 29.9.2015. The said application was allowed, thereby adding the said third parties as additional defendants in the original suit and additional respondent in the appeal. The said

order is challenged by the defendant/ tenant in Writ Petition No.10422/2015 and the third parties in Writ Petition No.12356/2015.

2. According to the defendant/ tenant, the third parties could not have been added as party and the application ought to have been outrightly rejected whereas according to the third parties, they ought to have been added as plaintiffs in the original suit and respondents in the appeal.

3. Mr. Gaware, the learned counsel for defendant/ tenant strenuously contends that, the ground of eviction was on the basis of bonafide requirement i.e. the original plaintiff Society wants to demolish the property and construct a new structure. The said relief was personal in nature to the original plaintiff. On sale of the property, the said cause does not survive. The purchasers from the original plaintiff during pendency of the appeal, would not get any right to further prosecute the same. Bar of Section 52 of the Transfer of Property Act has not been considered. The learned counsel relies on the judgment of the Apex Court in the case of **Sarvinder Singh Vs. Dalip Singh** reported in **1996(5) SCC 539**. The learned counsel submits that, the eviction as is contemplated under the Rent Act would be

limited to the cause of action which was available to the original plaintiff. The purchasers cannot claim the relief for themselves on the basis of the original cause of action of their vendor. According to the learned counsel, the order is illegal.

4. Mr. Dhorde, the learned Senior Counsel for the added parties submits that, a successor-in-interest can recover possession even if breaches were committed by the tenant before transfer of interest. The learned Senior Counsel relies on the judgment of the Division Bench of this Court in the case of **Radhabai Bapurao Shelar (Deceased by L.Rs.) and others Vs. Trimbak Madhavrao Shirole & others [AIR 1983 Bombay 303]**. The learned Senior Counsel submits that, the third party purchasers cannot be added as defendants, however, they have to be substituted as original plaintiffs.

5. I have considered the submissions canvassed by the learned counsel for the respective parties.

6. The third parties are the purchasers during the pendency of the appeal after the decree was already passed against the defendant/ tenant. The decree is passed for recovery of arrears of rent and also for eviction.

7. There cannot be any manner of doubt that the third party will be entitled to enforce the decree as far as the rent is concerned. Whether the third party purchaser will be entitled to maintain or contest the decree of eviction is altogether different question which the defendant/ tenant may agitate in appeal. Order XXII Rule 10 of the Civil Procedure Code covers such an eventuality wherein a successor-in-interest or an assignee-in-interest can be substituted in place of the original plaintiff or the original defendant. Order XXII Rule 10 of the Civil Procedure Code reads as under :

"Procedure in case of assignment before final order in suit:

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

10-A. Duty of pleader to communicate to Court death of a party :-

Whenever a pleader, appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose,

the contract between the pleader and the deceased party shall be deemed to subsist."

8. Considering the above, the third party was a necessary party after having purchased the suit property.

9. The contention of Mr. Gaware, the learned counsel that bar of Section 52 of the Transfer of Property Act would apply, is not in consonance with the legal proposition. Section 52 of the Transfer of Property Act binds the purchasers pendente lite by the decree passed. The purchasers in the present case is a purchaser from the decree holder and not the judgment debtor.

10. Considering the above, the order passed by the trial Court is modified to the extent that the third party purchaser shall be added as a respondent in the pending appeal and as a plaintiff in the suit. Writ Petition accordingly disposed of with aforesaid observations and directions. No costs.

(S.V. GANGAPURWALA, J.)