

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**CIVIL WRIT PETITION NO.3661 OF 2015**

Bharat Zumbar Ahiwale and Anr. ] ... Petitioners

Versus

Ramdas Sitaram Palekar and Ors. ] ... Respondents

Mr. Kishor S. Patil a/w Ms. Smita G. Mane for Petitioners.  
Mr. S. M. Oak a/w Mr. Sagar A. Joshi for Respondent Nos.1 to 3.

**CORAM :- R. G. KETKAR, J.**  
**DATE :- APRIL 16, 2016**

**P. C. :-**

1. Heard Mr. Kishor Patil, learned Counsel for petitioners and Mr. S. M. Oak, learned Counsel for respondent nos.1 to 3, at length.
2. By this petition under Section 227 of the Constitution of India, the petitioners have challenged the order dated 03/12/2014 passed by the learned Joint Civil Judge Junior Division, Baramati, in Regular Darkhast No.19 of 2007. By that order, the learned Trial Judge rejected the application made by the petitioners for impleading them as party in the pending Darkhast proceeding instituted by respondent nos.1 to 3.

3. Respondent nos.1 to 3 (herein referred to as 'Decree Holders') instituted suit against respondent nos.4 to 6 (hereinafter referred as 'Judgment Debtors') for specific performance of agreement of sale dated 09/06/2015. It appears that the suit was dismissed by the learned Trial Judge. By the Judgment and Decree dated 13/05/2011, the learned District Judge allowed Regular Civil Appeal No.59 of 2004 preferred by the Decree Holders and the suit was decreed. Judgment Debtors were directed to execute sale deed in favour of the Decree Holders and subject to the Decree Holders depositing balance amount of Rs.27,273/-. It was also made clear that in case the Judgment Debtors fail to move the revenue authority for seeking permission for sale of suit land, the Decree Holders were at liberty to seek permission for sale of suit land according to law. It was further made clear that in case the Judgment Debtors fail to execute sale deed by accepting balance amount and after obtaining permission from revenue authority within 90 days from the order, the Decree Holders will be at liberty in getting it executed through Court Commissioner. The learned District Judge also directed the Judgment Debtors to give vacant and peaceful possession of the suit land.

4. Mr. Oak submitted that after compliance of the conditions stipulated by the learned District Judge, sale deed is executed in favour of the Decree Holders. He submitted that possession is yet to be delivered to the Decree Holders.

5. Aggrieved by this decision, the Judgment Debtors preferred Second Appeal in this Court which was dismissed on 23/06/2014. Aggrieved by this decision, the Judgment Debtors approached the Apex Court and the SLP was dismissed on 31/10/2014.

6. It is not in dispute that the petitioners herein have purchased the suit land from the Judgment Debtors on 27/03/2014. In my opinion, after suffering decree by the learned District Judge, the Judgment Debtors could not have executed the sale deed in favour of the petitioners. In view thereof, I do not find that the petitioners derived any right, title and interest in the suit land. Proviso to Rule 10 of Order XXI reads thus :-

*“Where it is determined that the application is made by person to whom the Judgment Debtor has transferred the property after the institution of the suit in which the decree was passed, the Court shall dismiss the application under sub-rule (a).”*

7. Perusal of the above proviso shows that the Court has to dismiss the application made under sub-rule (a) made by a person to whom the Judgment Debtor has passed on the property after the institution of the suit in which decree was passed.

8. In the case of *H. Seshadri Vs. K. R. Natarajan and Another*<sup>1</sup>, the Apex Court has, in para 13, held thus :-

*“For the purpose of considering an application under Order 21 Rules 99 and 100 of the Code of Civil Procedure what was required to be considered was as to whether the applicant herein claimed a right independent of the judgment-debtor or not. A person claiming through or under the judgment-debtor may be dispossessed in execution of a decree passed against the judgment-debtor but not when he is in possession of the premises in question in his own independent right or otherwise.”*

9. In the present case, admittedly, the petitioners are claiming through the Judgment-Debtors. In view thereof, they are not claiming independent right. The petitioners are, therefore, liable to be dispossessed in execution of the decree passed against the Judgment-Debtors. Hence the petition fails and the same is dismissed.

10. At this stage, Mr. Patil orally applied for continuation of ad-interim order dated 10/04/2015 passed by this Court. By that order, subject to the petitioners depositing Rs.25 Lacs in this Court within two weeks, ad-interim order in terms of prayer clause (c) was granted. Mr. Patil states that the petitioners have deposited Rs.25 Lacs and they want to carry on this matter before the higher Court. He, therefore, prays for continuation of the ad-interim order dated

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<sup>1</sup> (2003) 10 Supreme Court Cases 449

10/04/2015 in terms of prayer clause (c) for a period of two weeks from today. Mr. Oak opposes this application on the ground that the petitioners have no semblance of right, title and interest. After considering the merits of the case, I have rejected the petitions. In view thereof, no case is made out for continuation of ad-interim order. At the same time, the petitioners shall not be permitted to withdraw Rs.25 Lacs deposited in this Court in pursuance of the order dated 10/04/2015 and the said deposit shall abide by the orders of the superior Court.

**(R. G. KETKAR, J.)**