

Mr. Vishal Kanade a/w. Mr. Uzair Kazi, Mr. Sachin Mhagavkar i/b. Divya Shah Associates for Petitioner.
Mr. Farhan Dubhash a/w. Ms Sheetal Shah for Respondent No.1.

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4. By order dated 05.01.2015 below exhibit-198, the learned trial Judge rejected the application made by the petitioner under Order 1, Rule 10 of C.P.C. for impleading him as the party in the Darkhast proceedings. By application exhibit-221, petitioner contended that respondent No.1 was not the decree-holder. Decree was not passed in her favour. The decree-holder Vanmala Salunke had executed the sale deed in favour of respondent No.1 while the Suit was pending. Respondent No.1, therefore, cannot execute the decree. Petitioner also filed application exhibit-244 challenging the Court Commissioner's report proposing allotment of shares.

5. In support of this Petition, Mr. Kanade submitted that though application exhibit-198 is styled as application under Order 1, Rule 10 of C.P.C., it is also made under Order 22, Rule 10 of C.P.C. He submitted that after passing of the decree, original defendant had executed sale deed in favour of one Teneti Suryachandra Raju on 14.08.2002. In view thereof, decree-holder filed application for impleading Teneti Suryachandra Raju as a judgment debtor which application came to be allowed. Teneti Suryachandra Raju, in turn, had assigned his rights in the suit property in favour of the present petitioner. He submitted that the provisions of Order 22, Rule 10 are applicable even to the execution proceedings, and therefore, the learned trial Judge ought to have impleaded the petitioner as judgment debtor. He submitted that the learned trial Judge rejected the application on the ground that petitioner has no right, title and interest in the suit property and that the transaction between Teneti Suryachandra Raju and petitioner took place after passing of the decree. He submitted that as the interest is created in favour of the petitioner, the learned trial Judge ought to have impleaded the petitioner as a judgment-debtor.

6. As far as the order below exhibit-221 is concerned, he submitted that as the decree was not passed in favour of the respondent No.1, she cannot execute the decree. As far as the order below exhibit-244 is concerned, he submitted that as the interest is created in favour of the petitioner, he has locus to raise objections to the share proposed by the Court Commissioner.

7. On the other hand, Mr. Dubhash supported the impugned orders. He submitted that respondents No.2 and 3 herein had instituted Suit against respondent No.4 - Mubarak Fakir Mohammed Shaikh. Suit was decreed. In the execution proceedings, respondent No.4 filed reply on 22.03.1994. Respondent No.4 submitted that the Commissioner be appointed for partition and separate possession of the $\frac{1}{3}^{\text{rd}}$ share and he is ready to deposit Court fee stamps. In other words, he submitted that respondent No.4 did not dispute the decree of partition whereunder respondents No.2 and 3-plaintiffs were allotted $\frac{2}{3}^{\text{rd}}$ share and respondent No.4 was allotted $\frac{1}{3}^{\text{rd}}$ share. He submitted that Teneti Suryachandra Raju is claiming through respondent No.4, and therefore, he is also bound by the stand taken by respondent No.4. He further submitted that petitioner has agreed to purchase the property from Teneti Suryachandra Raju by agreement of sale. He submitted that however, till date, the agreement of sale is not produced on record. In any case, agreement of sale does not by itself create any interest in favour of the petitioner. Petitioner, therefore, has no locus to intervene in the proceedings. As far as applications exhibit-221 and exhibit-244 are concerned, he supported the impugned order.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the order dated 23.09.2010 below exhibit-141 shows

that respondent No.4 had filed reply dated 22.03.1994 in the execution proceedings praying for appointment of Commissioner for effecting partition and handing over separate possession of his 1/3rd share. In other words, respondent No.4 has not challenged the decree of partition. It appears that respondent No.4 had sold his property in favour of Teneti Suryachandra Raju by registered agreement of sale dated 14.08.2002. In view thereof, Teneti Suryachandra Raju was joined as a judgment-debtor. Equally, respondents No.2 and 3 had executed sale deed in favour of respondent No.1 herein. Accordingly, respondent No.1 was also brought on record in the Darkhast proceedings. As far as the petitioner is concerned, it appears that Teneti Suryachandra Raju executed agreement of sale in favour of petitioner on 08.08.2005. Mr. Dubhash submitted that the said agreement is not produced on record. Mr. Kanade was not in a position to controvert this statement. That apart, Section 54 of the Transfer of Property Act, 1882 defines the expression “contract for sale”. It reads thus,

“A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

9. Perusal of the above definition shows that contract for sale does not, of itself, create any interest or charge on the property. In view thereof, the learned trial Judge was justified in observing that on the basis of agreement of sale dated 08.08.2005, petitioner cannot claim any interest in the suit property. Mr. Kanade submitted that petitioner has instituted Suit for specific performance of contract against Teneti Suryachandra Raju and that Suit is pending. Be that as it may. As of today, petitioner cannot claim any right, title and interest in the subject matter of the execution proceedings. In view thereof, I do not find that the learned trial Judge has committed any error in dismissing the

application exhibit-198.

10. As far as the challenge to the order below exhibits-221 and 244 is concerned, admittedly, respondents No.2 and 3 have executed sale deed in favour of respondent No.1. Respondent No.1 has stepped in the shoes of decree-holders / respondents No.2 and 3, she is, therefore, entitled to execute the decree. That apart, I have already held that on the basis of agreement of sale, no interest is created in favour of the petitioners. In view thereof also, petitioner cannot object to the execution of the decree by the respondent No.1. Equally, for the self-same reasons, he cannot insist for allotment of particular share proposed by the Commissioner. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab