

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 851 OF 2013**

Shri Rajaram Bajirao Pokale

..Applicant

Vs

Shri Hemchandra Rajaram
Bhonsale

.. Respondent

Mr. G.S.Godbole, Senior Advocate a/w Mr. Drupad S. Patil,
Advocate for Applicant.

Mr. Atul P. Vanarse , Advocate for Respondent.

**CORAM : R.G.KETKAR,J.
DATE : 14/03/2016**

PC:

1. Heard Mr.G.S.Godbole, learned senior counsel for the applicant and Mr. Atul Vanarse, learned counsel for respondent at length.
2. By this Application under Section 115 of C.P.C., the applicant has challenged the Judgment and order dated 18.7.2013 passed by the learned 3rd Jt. Civil Judge, Jr. Dn., Pune below Exhibit-28 in Regular Darkhast No. 205 of 1991. By that order, the learned trial Judge rejected the application-Exhibit 28 made by the applicant, hereinafter referred to as 'judgment debtor' under section 47 of C.P.C.
3. The respondent, hereinafter referred to as 'decree holder', had instituted Regular Civil Suit No. 910 of 1986 for specific performance of agreement for sale dated 26.4.1973. It appears

suit summons was served upon judgment debtor. Though judgment debtor appeared, he failed to file written statement and suit proceeded ex parte against him. When the matter was fixed for hearing on 7.9.1989 and the evidence of the decree holder was being recorded, judgment debtor remained absent when called out. By judgment and decree dated 30.11.1990, the learned trial Judge decreed the suit and directed judgment debtor to execute the sale deed within two months from the date of order. If judgment debtor failed to execute the sale deed in favour of decree holder, then decree holder was at liberty to get the document of sale deed executed through court commissioner and judgment debtor was also directed to hand over vacant possession of the suit property to the plaintiff.

4. It appears that judgment debtor filed Appeal on 10.11.1997. Along with that Appeal, judgment debtor also took out application for condonation of delay in filing the appeal. By judgment and order dated 26.6.1998, the learned District Judge dismissed the application. Aggrieved by that decision, judgment debtor instituted C.R.A.No.58 of 1999. By order dated 27.1.1999 C.R.A. was dismissed in limine. It is common ground between the parties that judgment debtor did not carry matter any further. In the meanwhile, decree holder had instituted Regular Darkhast No.205 of 1991 for execution of decree. Judgment debtor filed

application dated 9.8.1994 at Exh.28 under section 47 of C.P.C., inter alia, praying for cancelling the sale deed as also for rejecting the prayer made by decree holder for handing over possession. Decree holder filed reply at Exhibit-31 and denied the contents thereof. Judgment debtor examined himself and handwriting expert Anand Jadhav in respect of signature in the agreement of sale. After considering the material on record, the learned trial Judge rejected the application on 18.7.13. It is against this order judgment debtor has instituted present application.

5. In support of this application, Mr. Godbole reiterated the submissions that were advanced before the trial court. He submitted that the suit property was owned by Bajirao Sonu Pokale. Agreement of sale was allegedly executed by Shantabai Pokale and Rajaram Bajirao Pokale. The alleged agreement does not bear signature of either Shantabai or Rajaram. That apart, suit property was owned by Bajirao Pokale and not by the judgment debtor when the alleged agreement of sale was executed on 26.4.1973. He further submitted that before execution of the agreement of sale, decree holder had purchased stamp paper in the name of Shantabai Pokale, mother of the judgment debtor. The said stamp paper was misused for preparing bogus and fabricated agreement of sale dated

26.4.1973. He further submitted that even in the application Exhibit-28, in paragraph 3, the judgment debtor specifically asserted that decree holder had misled the Court and obtained decree of specific performance on the basis of forged and fabricated agreement of sale.

6. Mr. Godbole further submitted that while rejecting the application, the learned trial Judge has totally ignored expert's evidence to the effect that the agreement of sale does not bear signature of judgment debtor. Apart from that, Judgment debtor in paragraph 4 asserted that in the year 1987 the suit property was divided into various plots and all plots are sold by the judgment debtor to various purchasers and actual physical possession is handed over to purchasers. In other words, decree is not executable. He, therefore, submitted that the impugned order deserves to be set aside.

7. On the other hand, Mr. Vanarse supported the impugned order. He submitted that the decree of specific performance has attained finality and the executing court cannot go behind the decree. He submitted that plea of fraud is not specifically raised, in the sense, that either in application Exh.28 or in reply Exhibit 80 the judgment debtor did not take plea that agreement of sale does not bear signature of judgment debtor. That apart, even in the earlier round of litigation for setting aside exparte decree, no

plea was taken about signature as also dividing suit property into various plots and selling them to various purchasers.

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 assertions made in paragraph 3 of the application at Exhibit-28 as also reply at Exh.80, at the highest shows that judgment debtor asserted that the decree holder misused the stamp paper and prepared bogus and fabricated document of agreement of sale on 26.4.973. Judgment debtor did not specifically urge that agreement of sale does not bear signature of judgment debtor. That apart, perusal of the earlier proceedings for setting aside exparte decree also does not indicate that such plea was taken. In view thereof, I do not find that the learned trial Judge has committed any error in discarding evidence of handwriting expert Anand Jadhav. If the trial Court were to consider evidence of Anand Jadhav, it could have amounted to executing court going behind the decree which I have already pointed out, has attained finality.

9. Judgment debtor has also contended in paragraph 4 of application Exh.28 that he had laid the plots in the suit property and sold the plots to various persons in 1997. If that be so, judgment debtor cannot be said to have any locus to maintain proceedings under section 47 of C.P.C. That apart, no such plea

was taken in the earlier round of litigation. In my opinion, the entire attempt on the part of judgment debtor is to delay handing over possession. The decree of specific performance was passed on 30.11.1990 and till date decree holder is not put in possession.

10. In view thereof and for the reasons state in the impugned order. I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Application fails and the same is dismissed.

11. At this stage, Mr Godbole orally applies for continuation of ad-interim order dated 16.12.2013 in terms of prayer clause 6(iii) for a period of six weeks from today. Mr. Vanarse opposes this oral application. Having regard to the fact that judgment debtor himself claims in paragraph 4 of the application Exhibit-28 that he has already created third party interest, no case is made out for continuation of the ad interim order. Hence, oral application is rejected. Order accordingly.

(R.G.KETKAR, J.)