

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 419 OF 2016
IN
NOTICE OF MOTION (L) NO. 677 OF 2016
IN
EXECUTION APPLICATION NO. 20 OF 1998
IN
SUIT NO. 3033 OF 1994
WITH
NOTICE OF MOTION NO. 1981 OF 2016
IN
APPEAL NO. 419 OF 2016**

Ramzanali G. Ramodiya .. Appellant
versus
Hamida Karim Ramodiya & Ors. .. Respondents

Mrs. Vaishali Thorat i/b. Mr. P. Gujar for Appellant.
Mr. P. J. Thorat for Respondent No. 6(A).
Mr. Malvankar, Section Officer, Representative of the C.R. present.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.
DATE : 22 DECEMBER 2016**

P.C.:

1] Heard learned counsel for the appellant, as well as respondent no.6A.

2] It is not in dispute that in a suit filed for recovery of an amount by one brother against the other brother, there was a consent decree. During the pendency of the suit, certain properties were attached, including tenanted properties i.e. tenancy rights inherited by the family of the plaintiff and the defendants. During the pendency of the

execution proceedings for recovery of the decretal amount, certain amounts also seem to have been paid.

3] Meanwhile some of the shop properties whose tenancy rights were vested with the family, according to the appellant and the respondents was sold to third party by the erstwhile owner of the property, including the tenancy rights of the tenants. By virtue of such conveyance, whatever the encumbrances or obligations attached to the property would automatically go along with the conveyance document. The rights and obligations between the landlord or lessor and lessee will continue but in the place of the original owner and lessor, the subsequent purchaser would step in. By virtue of such conveyance during pendency of the execution application for the reason of attachment of these properties, where tenancy rights were in favour of the parties, the nature of the decree to be executed will not go beyond the terms which was passed on consent terms. If there is any independent right which has to be protected either by the decree-holder or by the judgment-debtor in the light of attachment of tenancy rights, it is altogether an independent right that has to be fought against the third party purchaser and it has nothing to do with the consent decree obtained in the suit. Apparently, the owner of the property was not a party to the partition suit. Therefore, subsequent purchasers stepping into the shoes of the owner of the property cannot become a proper or necessary party, by virtue of subsequent event of purchase of the property by the third party.

4] All contentions are kept open between the parties to the suit, execution proceedings and the third party. It is made clear that the observations made by the learned Single Judge in the impugned order will not affect the rights of the parties so far as the third party is

concerned. Accordingly, the appeal is disposed of.

5] In view of disposal of the appeal, notice of motion does not survive and is disposed of accordingly.

CHIEF JUSTICE

(M. S. SONAK, J.)

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