

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO.3253 OF 2016

(Chandrashekhar s/o Vinayak Chalse and others ..vs.. Sau. Ranukabai Mahadeorao Dandi)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 13-06-2016

Heard Shri S.S. Sarda, Advocate for the
petitioners/judgment-debtors.

2. The petitioners have challenged the order passed
by the executing Court rejecting their objection.

3. The respondent filed civil suit praying for decree
for declaration that the sale-deed dated 06-06-1994 was
null and void and not binding on the respondent and for
possession of the suit field. The trial Court, by the
judgment dated 23-08-2007, decreed the suit of the
plaintiff, granted decree for declaration that the sale-
deed dated 06-06-1994 is null and void and not binding
on the plaintiff and directed the defendant to hand over
the possession of the suit field to the plaintiff within one
month. The trial Court granted ancillary relief. This
judgment and decree was challenged before the District
Court in appeal, which is dismissed.

4. The respondent has filed execution

proceedings. In these proceedings, the petitioners raised objection by the application (Exhibit No.28) to the effect that the judgment and decree passed in Regular Civil Suit No.30/2005 and maintained by the District Court is nullity as the civil Court had no jurisdiction to entertain and decide the civil suit filed by the respondent-plaintiff. The executing Court has rejected this objection.

5. Shri S.S. Sarda, Advocate for the petitioners, relying on the provisions of Section 29 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (in short "Ceiling Act of 1961") has submitted that if an issue arises as to whether the sale of agricultural land is valid and not hit by the provisions of the Ceiling Act of 1961, then the power to decide the issue vests with the Collector only. The provisions of Section 41 of the Ceiling Act of 1961 are referred to contend that the civil Court has no jurisdiction to decide whether the sale-deed is null and void. The learned Advocate has submitted that as the civil Court had no jurisdiction to entertain and decide the Regular Civil Suit No.30/2005, the decree passed by it is nullity and challenge to its legality can be set up at any stage and in any proceedings. To support the submission, reliance is placed on the judgment given by the Hon'ble Supreme Court in the case of *Sushil Kumar Mehta vs. Gobind Ram Bohra* reported in *1990(1)SCC 193*.

The learned Advocate has pointed out from the impugned order the conclusions of the executing Court that the issue which is now raised by the judgment-debtor is already decided as issue No.5 in the civil suit and has submitted that the conclusions are erroneous as the issue No.5 was whether the claim made by the plaintiff was maintainable before the civil Court in view of the bar created by the provisions of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act 1958. It is argued that the civil Court, while deciding Regular Civil Suit No.30/2005, had not considered the issue whether the civil suit was barred because of the bar created by Section 41 of the Ceiling Act of 1961.

6. Section 41 of the Ceiling Act of 1961 lays down that the civil Court shall not have jurisdiction to settle, decide or deal with any question which is required to be settled, decided or dealt with by the authorities under the Ceiling Act of 1961. The judgment delivered in Regular Civil Suit No.30/2005 does not deal and decide any issue required to be decided by the authorities under the Ceiling Act of 1961. The adjudication by the civil Court was on the basis of Section 29(3) of the Ceiling Act of 1961 which creates a legal fiction that any transfer or division of land and any acquisition thereof in contravention of sub-section (1) of Section 29 shall be invalid.

7. Considering the facts of the case, I do not find that any error of jurisdiction is committed by the executing Court. It cannot be said that the executing Court has failed to exercise the jurisdiction vested in it or has overstepped its jurisdiction. The proposition laid down in the judgment relied on behalf of the petitioners is well settled. However, in the present case, it cannot be said that the Court which passed decree in Regular Civil Suit No.30/2005 lacked jurisdiction to entertain and decide the civil suit. Therefore, the judgment relied upon by the learned Advocate for the petitioners does not assist the petitioner.

8. I see no reason to interfere with the impugned order. The petition is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE

adgokar