

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

WRIT PETITION NO.2883 OF 2016

Jaikumar s/o Dharamdasji Gupta and ors.

-vs-

Ashalata w/o Ratan Chandak and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. S. Dhengale, Advocate for petitioners.
Shri V. K. Barlinge, Advocate for respondent No.1.
Shri M. M. Sudame, Advocate for respondent No.4.

**CORAM : B.P.DHARMADHIKARI &
A.S.CHANDURKAR, JJ.**

DATE : AUGUST 25, 2016

Heard.

Challenge is to mutation proceedings. Petitioners claim to be purchasers after dismissal of execution proceedings. It appears that execution proceedings were dismissed because of failure of respondents-decree holders to comply with time bound directions therein. In appeal filed by them against dismissal of execution, the proceedings are restored. Second appeal filed against that appellate order was dismissed in default and restoration proceedings taken up by the judgment-debtors for restoration of that second appeal is pending before this Court.

The petitioners, seven in number, pointed out that judgment-debtors after dismissal of execution proceedings, sold the immovable property to one Shri Somani and petitioners have purchased the property from said Shri Somani. According to Advocate Shri Dhengale, in this

situation, there is no question of doctrine of *lis pendence*. He further adds that claim of title by the present petitioners was well within the knowledge of decree holders and in application filed in second appeal they have pointed out these sale-deeds.

He states that in this situation, if the execution is finally decided on the strength of symbolic possession, the petitioners may lose everything.

The title dispute between the parties is pending before the competent Court and there the issue can be adjudicated. If petitioners claim any title, they can point out the same to that Court, as per law.

In mutation proceedings, the concerned authority will not be adjudicating upon title and that issue therefore is not open before him. Any order passed by the authority in mutation proceedings cannot affect the title of present petitioners, if any, to the suit property.

In this situation, we find challenge at their instance to mutation proceedings in this writ petition is misconceived.

Hence without observing anything on merits of controversy and keeping all rival contentions open as also with liberty to the petitioners to take such other steps as are open to them in accordance with law, we dispose of the writ petition with no order as to costs.

JUDGE

JUDGE

-: C E R T I F I C A T E :-

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