

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2045 OF 2014
(Raju Chhabu Patil Vs.Digambar Lalchand Mahale and another)

Mr.U.A.Bhadgaonkar, Advocate for the petitioner.
Mr.A.S.Sawant, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 09/06/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 14/02/2014 by which his application Exh.46 in Spl.Dkt.No.31/2009 has been rejected.

2. I have considered the strenuous submissions of Mr.Bhadgaonkar, learned Advocate for the petitioner and Mr.Sawant, learned Advocate for respondent No.1. Respondent No.2, though served by court notice, has not chosen to enter an appearance either in person or through an Advocate.

3. The respondent had preferred Spl.C.S.No.54/2006 on 03/04/2006 for seeking specific performance of a contract with the original owner Dangalrao who had agreed to sell the suit land to respondent No.1 by Agreement to sale dated 27/03/2004. During the

pendancy of the suit, Dangalrao executed a sale deed on 26/09/2007 in favour of one Dilip Patil. On 03/01/2008, Dilip Patil executed a sale deed in favour of the petitioner Raju Patil. The Trial Court decreed SCS No.54/2006 on 03/01/2009 and directed Dangalrao to execute the sale deed in favour of respondent No.1. Accordingly, the sale deed was executed under the orders of the Court on 31/03/2010 in favour of respondent No.1 namely Digambar Lalchand. The petitioner, therefore, filed SCS No.90/2010 which is subsequently renumbered as RCS No.148/2012. The petitioner sought a declaration that the sale deed executed on 31/03/2010 is null and void and is not binding on the petitioner. His said suit was dismissed by judgment dated 08/04/2013.

4. In the meanwhile, respondent No.1 Digambar filed Spl.Dkt.No.31/2009. The petitioner moved an application Exh.36 on 03/07/2010 before the Executing Court praying for being added as a respondent. The said application was rejected by the Executing Court on 26/09/2013. It is undisputed that the said order refusing to array the petitioner Raju Patil as a respondent has not been challenged by him till date. The said order has therefore attained finality.

5. In the meanwhile, the petitioner Raju Patil filed one more application Exh.47 quoting Order 21 Rules 58, 97, and 101 of the CPC for being added as the respondent in the execution proceedings. The executing Court, by the impugned order dated 14/02/2014, has rejected application Exh.47 on two counts. Firstly, that an identical earlier application Exh.31 has already been rejected and the said order has not been challenged. Hence, the second application cannot be filed for the same purpose. Secondly, the Executing Court has concluded that any person, who buys a property during the pendency of the litigation, cannot be permitted to join the execution proceedings after the suit has been decreed in favour of the plaintiff.

6. Respondent No.1 has relied upon the judgment of the Hon'ble Supreme Court in Usha Sinha Vs. Dina Ram and others [(2008) 7 SCC 144] to support his contention that any person purchasing a property, which is subject matter of a suit, ought not to scuttle the execution proceedings as the decree holder would not get the fruits of the decree.

7. Notwithstanding '*transferee pendente lite*', the fact remains that the petitioner had filed an earlier application Exh.36 and the said application was rejected by order dated 26/09/2013, which has

attained finality. Having failed to secure an order for being added as a respondent, the petitioner cannot be permitted to file an application after application for the same purpose.

8. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)