

vks

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL (ST) NO.14032 OF 2018
WITH
CIVIL APPLICATION NO.950 OF 2018**

Santosh Shivaji Patil and ors ... Appellants.

V/s.

Shahaji Anna Patil and ors ... Respondents

Mr. Mandar Limaye i/by Siddharth C. Wakankar, for
the applicants.

Mr. Ramdas A. Shelke, for respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 8st OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the appellants and respondents.

2] In this Second Appeal, exception is taken to the order dated 30.11.2017, passed by the District Judge-2, Sangli, thereby dismissing Regular Civil Appeal No.213 of 2015.

3] The said appeal was preferred by the the appellant challenging the order dated 3.7.2017, passed by the Court of Joint Civil Judge Junior Division, Palus, in Regular Darkhast No.70 of 2008, below application Exh.103.

4] This Application at Exh.103 was taken out before the executing Court, by the appellants herein, who are the legal heirs of original judgment debtor -defendant No.2 namely Shivaji Patil, who

has purchased the suit property during pendency of the suit.

5] After the suit was decreed, the appellants have filed this application before the executing court, raising obstruction to the execution of the decree, on the count that there is no specific direction in the judgment and order directing defendant No.2 to hand over the possession of the suit property to the respondent- decree holder.

6] The trial Court, rejected the said application on two fold grounds. In the first place, it was held that as the application is filed under Order 21 Rule 97 to 103 of Code of Civil Procedure, the obstruction to the execution, can be entertained only at the stage of possession. Hence, it was held that the application was premature as the stage of delivery of possession is yet not reached. The appellate Court rightly interfered in this observation of the executing Court, considering that application is also filed under Section 47 of Code of Civil Procedure.

7] The second ground on which the trial Court has rejected the application is that the appellants are legal heirs of original defendant No.2, who has purchased the property during pendency of the suit. Hence they are bound by the decree in view of principle of *lis-pendens*, as laid down under Section 52 of the Transfer of the Property Act. The Appellate Court has also confirmed the finding of

the executing Court, by relying on the judgment of the Apex Court in the case of **K. N. Aswathnarayana Setty (dead) through Lrs -vs- State of Karnataka and ors**, [(2014) 15 SCC 394]; wherein it was held as follows :-

“Doctrine of *lis pendens* is based on legal maxim 'ut lite *pendente nihil innovetur*' (During a litigation nothing new should be introduced). The doctrine stood embodied in Section 52 of the Transfer of Property Act, 1882. The principle of '*lis pendens*' is in accordance with the equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee *pendente lite* is bound by the decree just as much as he was a party to the suit. A litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. However, it must be clear that mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject matter of the suit. The law simply postulates a condition that the alienation will, in no manner, affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the Court. The transferee cannot deprive the successful plaintiff

of the fruits of the decree if he purchased the property *pendente lite*”

8] While challenging this order of the Appellate Court, learned counsel for the appellant has relied upon the judgment of the Apex Court, in the case of **A. Nawab John and others -vs- V.N. Subramaniam [(2012) 7 SCC 738]**; wherein the Apex Court was pleased to observe as follows :-

“18. It is settled legal position that the effect of Section 52 is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The *pendente lite* purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the Court.”.

(emphasis supplied)

9] The submission of learned counsel for the appellant is that it was incumbent on the trial Court to decide the legal rights and obligations of the appellants, who were transferee *pendente lite*. The trial Court, has decreed the suit simpliciter. However, there is no specific direction in the judgment of the trial Court that defendant

No.2, that is the predecessor of present appellants should deliver the possession of the suit property to the plaintiff. The trial Court has also not given finding as to whether the sale deed executed in favour of defendant No.2 by the vendor is illegal, null and void. It is submitted that in the absence of any such adjudication of the rights of defendant No.2, in the suit, appellants cannot be said to be bound by such decree. According to learned counsel for appellants the effect of Section 52 of the Transfer of Property Act, is not to render the transfers effected during the pendency of the suit by a party to the suit void; but such transferee is only bound by the outcome of the suit, provided his legal rights and obligations are also decided, in the same suit. In my considered opinion, however, this submission advanced by learned counsel for appellant cannot be accepted, for the simple reason that even in this judgment of **A. Nawab John (supra)**, **on which** reliance is placed, specific observations are to the effect that *pendente lite* purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the Court. Therefore, it is not at all expected to determine separately his rights or interests in the suit property. The Court has only to consider the legal rights and obligations of his vendor and same legal rights and obligations of transferee *pendente lite* has to suffer which may be eventually determined by the Court.

10] In the instant case, the trial Court has already determined the legal rights and obligations of the vendor namely, the original defendant No.2 and thereafter decree the suit for possession and specific performance of the agreement. In view thereof, it was not necessary to determine separately the legal rights and obligations of defendant No.2, who was the transferee *pendente lite*.

11] In the Second Appeal, therefore, no substantial question of law is raised. Hence, the appeal stands dismissed.

12] In view of dismissal of Second Appeal, pending Civil Application therein no more survives and the same is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]