

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4308 OF 2019 IN
WRIT PETITION NO. 548 OF 1992

Mahboob s/o Shaikh Noor

Applicant

Versus

Roshanbee w/o Shaikh Rahim
& others

Respondents

Mr. S.S. Kulkarni, Advocate for the applicant.

Mr. S.S. Kazi, Advocate for respondents no. 1(A)(a) to 1(A)(f).

CORAM : M.S. KARNIK, J.

DATE : 8th August, 2019.

PER COURT :

1. This is an application for recalling order dated 20.06.2013 and setting aside abatement. on 20.06.2013, this Court passed the following order :

1. Heard.

2. Mr. K.G. Khader, learned counsel for the petitioners submits that both the petitioners are dead. So also Respondent Nos. 1 and 2. are dead.

3. In light of that, the Writ Petition abates. The Writ Petition is dismissed as abated.

2. Respondents in this application are the original plaintiffs. Plaintiffs filed Regular Civil Suit No. 138/1979 before the learned Civil Judge, Senior Division, Beed, against the applicant-original defendant no. 3 for redemption of mortgage and for recovery of

possession. Defendant no. 3, by filing written statement, took a plea that he is the tenant of the suit land. The learned trial Court framed issue in respect of tenancy and referred the matter to the tenancy Court.

3. The Tahsildar, Beed, rejected defendant no. 3's claim of being a tenant. In appeal, the Collector, Beed, by an order dated 24.06.1988, declared defendant no. 3 to be the tenant. Plaintiffs preferred revision before the Maharashtra Revenue Tribunal, Aurnagabad, wherein defendant no. 3 was held not to be a tenant. Defendant no. 3 filed present writ petition i.e. Writ Petition No. 548/1992 in this Court challenging the order passed by the Maharashtra Revenue Tribunal, Aurangabad. This Court granted rule and the matter was pending for final hearing.

4. Plaintiff no. 1 Roshanbee expired on 17.02.2005. In the year 2010, defendant no. 4 expired. Defendant no. 3 and other co-sharers sold the suit property vide registered sale-deed dated 24.02.2010 to defendant no. 16. Defendant no. 3 expired in the year 2012. Defendant no. 1 expired on 10.05.2013. It is in this view of the matter, that this Court held that the petition is abated.

5. From the record it appears that plaintiffs - present respondents no. 1 and 2, applied to the trial Court for setting aside the abatement. Said application for setting aside abatement was allowed by the trial Court on 10.03.2016 by imposing cost payable to the District Legal Services Authority, Beed. It also appears from record that the subsequent purchaser viz. defendant no. 16 was added as party defendant vide order dated 06.10.2016 on an

application made by original plaintiffs below Exhibit 38. Thus, the position as it stands is that the abatement order has been set aside and the suit would now be heard on merits. Even the subsequent purchaser has been added as party defendant to the suit on 06.10.2016.

6. Defendant no. 3, by filing the present petition, has challenged the order of the Maharashtra Revenue Tribunal holding that defendant no. 3 is not a tenant in respect of the suit property. The petition is pending since 1992. The subsequent purchaser had filed Civil Application No. 3378/2017 in the present petition for adding him as a party. This Court, by order dated 15.09.2017, observed that as the petition stood abated and dismissed vide order dated 20.06.2013, the application filed by the subsequent purchaser is dismissed with liberty to him to take such steps as permissible in law.

7. Thereafter the subsequent purchaser filed Writ Petition No. 9086/2018 challenging the order dated 21.09.1990 passed by the Maharashtra Revenue Tribunal. The very same order was subject matter of challenge in Writ Petition 58/1992 which stood abated. This Court, while dismissing Writ Petition No. 9086/2018 vide order dated 21.01.2019, observed that the subsequent purchaser is the purchaser of the land which was subject matter of pending litigation. His rights are akin to the rights of vendors. It is further observed that the subsequent purchaser had approached this Court by filing Civil Application No. 3378/2017 seeking impleadment in Writ Petition No. 548/1992 which came to be dismissed as abated. While dismissing the petition, this Court

observed that since specific prayers and requests made in the civil application, which were aimed at assailing the order of the Maharashtra Revenue Tribunal dated 21.09.1990, had been rejected by this Court, a second petition for challenging the said order claiming to be purchasers pendent lite, cannot be entertained.

8. Learned counsel for respondent no.1-original plaintiff would invite my attention to the observations made by this Court in the order dated 21.01.2019 that the subsequent purchasers who have been impleaded as party to the suit are at liberty to canvas their respective cases in the suit. Learned counsel would further submit that the present application for setting aside abatement is at the instance of the subsequent purchasers who have failed to get any relief in civil application filed by them in this petition as well as in Writ Petition no.9086/2018, which came to be dismissed on 21.01.2019. In this view of the matter, learned counsel for respondent no. 1 would submit that the present application is not bonafide but an attempt to scuttle the orders passed by this Court rejecting the writ petition filed by the subsequent purchasers.

9. I have gone through the record. The present application is for setting aside abatement of the writ petition. No doubt, there is delay in filing the application. There is substance in the contention of the learned counsel for the applicant that most of the sale-deeds are executed in favour of the subsequent purchasers after the abatement of the suit. He would submit that there was only one sale-deed which was executed during the pendency of the suit. Learned counsel would therefore submit that there was no

occasion for the applicants to apply to this Court for setting aside abatement as the suit itself was not subsisting in view of its abatement. From the record, it is seen that the application for setting aside abatement filed by the plaintiff was allowed by the trial Court on 10.03.2016.

10. The subsequent purchasers had made an application in the pending petition for reliefs which were not granted by this Court in view of abatement of the writ petition. Even this Court, while dismissing the writ petition filed by the subsequent purchasers challenging the order of the Maharashtra Revenue Tribunal, observed that the subsequent purchasers have stepped into the shoes of the present applicants and they would be at liberty to raise such contentions before the trial Court.

11. In this view of the matter, in my opinion, the present application deserves to be allowed. It is only on 11.03.2016, that the abatement of suit was set aside by the trial Court. The subsequent purchasers have been added as party defendants to the said suit. The issue of tenancy was referred by the trial Court to the Tahsildar. Against the order of the Maharashtra Revenue Tribunal rejecting applicants' claim of tenancy, present writ petition was filed in which rule came to be issued. Applicants, though have sold the suit property, they would nonetheless have right to contest the petition and establish their claim of tenancy as they are parties to the suit and can always defend their title as the subsequent purchasers would be claiming through them. The applications made by the subsequent purchasers are rejected only because the writ petition filed by the present applicants stood

abated. Now, when the trial Court has set aside abatement of the suit, there is no reason as to why the present application should not be allowed.

12. In this view of the matter, for the reasons mentioned in the application, the delay is condoned. Order dated 20.06.2013 passed by the this Court is recalled. Writ petition is restored subject payment of cost of Rs. 5,000/- to the High Court Legal Services Authority by the applicants within 2 weeks from today.

13. Application is also allowed in terms of prayer clause 'D'. Necessary amendment to the title of the writ petition be carried out within a period of two weeks from today.

14. Civil application accordingly stands disposed of.

(M.S. KARNIK, J.)

dyb/