

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4981 OF 2019
(Rajendra s/o Champalal Munot and another Vs. Shri Ramkrishna
Urban Sahakari Credit Society Limited and others)

Mr.D.R.Bhadekar , Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 09/07/2019

PER COURT :

1. The petitioners are third parties, who are aggrieved by the impugned order dated 18/09/2018 passed by the Executing Court issuing the following directions :-

“1. The objections are hereby rejected and objectionists be joined as parties to execution as judgment debtors. The decree holders to carry out amendment in the execution proceeding to that effect.

2. The said plots, as described in the order of Co-operative Court are hereby attached, prohibiting the judgment debtors from transferring them, or charging them in any manner as well as all persons taking any benefit of such transfers.

3. The order of attachment of properties be proclaimed by beat of drum and copy of order be affixed on conspicuous of said properties, Court house, in office of Collector and office of Cantonment Board.

4. The expenses regarding the same be paid by decree holder, as per rules.”

2. The learned Advocate for the petitioners strenuously submits that the first owner may have taken the loan and proceedings have commenced for recovering the said loan amount from the borrower and the guarantor. The petitioners are probably the third or the 4th purchasers of the same property. They claim to be bonafide purchasers and as such, by the passage of time, the property possessed by them cannot be attached. When the property was in possession of the earlier owners, the same was not attached.

3. The Executing Court has considered the objections raised by these petitioners and has noticed from the record that it is admitted that while the loan was granted to the original owner Kailas Madan in 2001 and he defaulted its repayment, the property changed hands apparently on account of the malafide actions of the original owner. These petitioners have purchased the properties during litigation and if they claim to be bonafide purchasers, then, in my view, the definition of 'bonafide' would render these petitioners liable for the consequence flowing therefrom.

4. The Executing Court has also relied upon the judgment delivered by the Hon'ble Apex Court in the matter of Usha Sinha Vs. Dina Ram and others [2008 (5) Mh.L.J.483], wherein it has been

concluded that Rule 102 clarifies that Rules 98 and 100 under Order XXI do not apply to *transferee pendene lite*. The Hon'ble Apex Court has therefore concluded that such purchasers do not have any right.

5. Considering the above and keeping in view that the litigant dates back to 2004 which is 14 years ago, I do not find that the Executing Court has committed an error in passing the impugned order. This petition, being devoid of merit, is therefore dismissed.

(Ravindra V.Ghuge, J.)