

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 189 OF 2019

1) Pandit Nagnath Patil,
Age : 50 years, Occu. : Agri.,
R/o. Davatpur, Tal : Ausa,
Dist. : Latur

2) Prakash Wamanrao Patil,
Age : 30 years, Occu. : Agri.,
R/o. Tapse Chincholi,
Tal : Ausa, Dist : Latur

.. Petitioners
(Orig. Objection Petitioners)

Versus

1) Chandrakant Dattu Mamde,
Age : 66 years, Occu. : Agril.,
R/o. Almala, Tal : Ausa,
Dist : Latur

2) Smt. Sangita W/o. Rameshwar Patil,
Age : 46 years, Occu. : Household,
R/o. Sattardharwadi, presently
residing at Almala, Tal : Ausa,
Dist. : Latur

3) Shivling S/o. Rameshwar Patil,
Age : 26 years, Occu. : Service,
residing at Almala, Tal : Ausa,
Dist. : Latur

4) Daivashala Rameshwar Patil,
Age : 22 years, Occu. : Education,
R/o. Sattardharwadi, presently
residing at Almala, Tal : Ausa,
Dist. : Latur

5) Shivkannya S/o. Rameshwar Patil,
Age : 19 years, Occu. : Household,
R/o. Sattardharwadi, presently
residing at Almala, Tal : Ausa,
Dist : Latur

- 6) Umakant Shahuraj Patil,
Age : 40 years, Occu. : Agri.,
r/o. Sattardharwadi, presently
residing at Almala, Tal : Ausa,
Dist : Latur
- 7) Vitthal Mahada Kamble,
Age : 80 years, Occu. : Agri.,
R/o. Sattardharwadi, Tal : Ausa,
Dist : Latur
- 8) Ramesh Vitthal Kamble,
Age : 59 years, Occu. : Service,
R/o. Sattardharwadi, Tal : Ausa,
Dist : Latur

.. Respondents
(R. 1: Ori. Plaintiff,
R.2 to 8 : Ori. Defts)

...
Mr. Ameya N. Sabnis, Advocate for petitioners
Mr. B.R. Waramaa, Advocate for respondent no.1
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 09-01-2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally, by consent.
2. Learned counsel for petitioners Mr. Sabnis purports to refer a couple of decisions viz. *Bhanwar Lal Vs. Satyanarain and another* reported in (1995) 1 Supreme Court Cases 6 and *Uttam Murari Kadam Vs. Hajira Begum Nisar and others* reported in 2012 (3) Mh.L.J. 661, to contend that rejection of application exhibit - 49 seeking permission to

adduce evidence is not proper. He submits that rejection of exhibit – 49 is prejudicial to the interest of petitioners. He also contends that it would be imperative for the court to consider objections from the person in possession pursuant to Order XXI Rule 97 of code of civil procedure and the procedure to be followed therefor. He submits that, as such, impugned order is unsustainable in view of above and aforesaid two decisions.

3. Learned counsel for respondent no. 1 Mr. Waramaa on the other hand submits that objection by petitioners is unsustainable for they are transferees of suit property after the decree had been passed and appeal by the judgment debtor had been dismissed and further that registered purchases have been *lis pendens*. He, therefore, submits that no amount of evidence is likely to favour petitioners and that facts are self-speaking requiring no evidence at all. He further purports to refer to that the petitioners even do not dispute the chronology of events and factual position. He submits that not in all the cases of objections at the behest of judgment debtor or their transferees, trial would be required particularly having regard to given facts and circumstances in present case. He refers to and relies on a decision of supreme court dated 19-07-2016 in the case of *Bool Chand (Dead) Through Lrs. and others Vs. Rabia and others* reported in 2016 (14) SCC 270 and 2016 DGLS (SC) 757. Its head note reading thus,

" Code of Civil Procedure, 1908, S. 47 O. 21 – Execution of decree – Resistance against dispossession – Filing of objection – Executing Court rejected objection without giving finding like that in regular civil suit – High Court set aside order and remanded matter to decide afresh - Held, executing court was not required to record findings like a regular civil suit while rejecting such objections – Order of High Court set aside (Para 12) "

He submits that as observed by supreme court in aforesaid case, executing court is not required to record findings like a regular civil suit while rejecting such objections.

4. Having regard to aforesaid submissions and observations of executing court, as appearing in paragraphs no. 7 and 8, reading, thus,

" 7. On perusing record it appears that this court has passed decree in RCS No. 227/2007 dated 6.12.2014. Thereafter the J.D. has filed first appeal before the Hon'ble District Judge Latur, that appeal was dismissed. The applicants stated that they have purchased property by registered sale deed dated 28.7.2017. It means the present applicants have purchased the property after passing of decree by this court. The D.H. has produced lis pendence notice, which is registered by him before Sub-Registrar, Ausa. The D.H. has registered lis pendence notice on 16.11.2015. It means prior to executing the sale deed in favour of the present applicants. Admittedly the present applicants have purchased property from suit property from legal representatives of J.D. Shahuraj. Therefore they have not get independent or exclusive right. They got right through J.D. Considering these situations it comes on record that this court has passed decree in the year 2014. The D.H. has registered lis pendence notice in the year 2015. Thereafter, the present applicants have purchased the property in the year 2017.

8. Considering above situations in my view the present applicants have not get the independent rights, they have get right from legal representative of J.D. The objection of petitioner can be decided on documentary evidence which is produced by them.

There is no necessary to lead oral evidence. Considering this situation I am not found any substance in the application. The applicants are filed this application to prolong the matter. This court has already issued possession warrant. Considering these all circumstances and situation in my view application needs to be rejected. Hence, the following order.

O R D E R

- 1. The application stands rejected.*
- 2. No order as to costs. ”*

it does not appear that the writ petition calls for any interception of aforesaid order in discretionary powers of this court in given facts and circumstances.

5. Writ petition, therefore, is dismissed.
6. Rule stands discharged.

[SUNIL P. DESHMUKH]
JUDGE

arp/