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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO. 54 OF 2010
IN
WRIT PETITION NO. 7418 OF 2009

Shankar Dinkar Salunkhe
Age adult, Occ: Agriculture
residing at Post Kundal,
Taluka Palus, Dist. Sangli. .. Appellant

Versus

1. Popat Gyanu Pawer, D/H
Through legal heirs.

1A. Smt. Shakuntala Popat Pawar
Age 45 yrs. Occ: Household,
Kundal, Tal-Palus, Dist. Sangli.

1B. Himmat Popat Pawar
Age 27 Yrs. Occu. Agri.
R/o. As above.

1C. Shri Jayawant Popat Pawar
Age 22 yrs., Occu. Agri.
R/o. As above.

2. Shree Satyavijay Sahakari Bank Ltd.
A Cooperative Bank registered
under the Maharashtra Cooperative
Societies Act, having its office
at Post Kundal, Taluka Palus
Dist. Sangli.

3. Special Recovery Officer,
Shree Satyavijay Sahakari Bank
Ltd. having its office at Post
Kundal, Taluka Palus,
Dist. Sangli.

4. The Assistant Registrar,
Cooperative Societies, Palus,
Dist. Sangli.

5. The Divisional Joint Registrar
Cooperative Societies, Kolhapur
Division, Kolhapur having his
Office at Udyog Bhuvan, Assembly Road
behind Collector's Office,
Kolhapur. .. Respondents

Mr. N. J. Patil for Appellant.
Mr. K. S. Patil for Respondent Nos.1A to 1C.
Mr. Irshad Malik i/by Umesh Mankapure for Respondent No.3.
Mr. K. S. Thorat, AGP for State.

CORAM: PRADEEP NANDRAJOG, CJ. &
SMT. BHARATI DANGRE, J.

NOVEMBER 28, 2019.

ORAL JUDGMENT [Per Pradeep Nandrajog, CJ.] :

1. Heard learned Counsel for the parties.

2. Popat Gyanu Pawar, the writ petitioner and respondent No.1 in the Appeal, had availed loan from Shree

Satyavijay Sahakari Bank Ltd., impleaded as respondent No.2 in the Appeal. He was in default. Attaching a tractor belonging to Popat Gyanu Pawar and realizing the sale proceeds, the Bank credited the same to the loan account. The loan account was not squared off. The bank proceeded to sell Popat's undivided 1/3rd share in agriculture lands bearing Gat No. 1913/1, 2, 3, 4, 5 and 6 ad-measuring 3.41 Hectare. Popat's interest being 1/3rd, for reasons un-explainable the Recovery Officer proceeded to auction 71 Ares land comprised in Gat No.1913/4, 5 & 6.

3. At the auction, the Appellant was the highest bidder. The Recovery Certificate showed principal amount repayable was ₹ 5,34,000/- with interest @ 20% per annum thereon. The Appellant purchased the said 71 Ares land for ₹ 7 lakhs.

4. Popat Pawar challenged the sale before the Divisional Joint Registrar and failed. The reason given by the learned Divisional Joint Registrar is that as per Rule 107/15 of the M.C.S. Rules, 1961 Popat Pawar could get the sale set aside only after depositing the auction price plus 5% thereof which he did not do. Popat Pawar marched to this court and filed Writ Petition No. 7418 of 2009 which has been allowed by the learned Single Judge vide impugned Judgment dated 12th January, 2010 and the core

reasoning of the learned Single Judge is that the index valuation evinced that Popat's 1/3rd share in the joint property which translated to 71 Ares would be ₹ 14 lakhs and auction bid in sum of ₹ 7 lakhs was to low. Meaning thereby, the learned Single Judge has faulted the valuation.

5. The impugned order records that Popat Pawar had deposited, under directions of the court, ₹ 8,41,414/- to satisfy the dues of the Bank.

6. The learned Single Judge, therefore, disposed of the petition requiring Popat Pawar to pay to the Appellant interest on ₹ 7 lakhs deposited by the Appellant with the Bank @ 15% thereon from 12th September, 2007 till payment of interest. The Bank and the Appellant have been directed to execute Deed of Cancellation pertaining to the Sale Certificate issued by the Bank in favour of the Appellant.

7. The learned Single Judge has been influenced by the fact that Popat Pawar is an illiterate villager and perhaps was not advised properly to challenge the notice issued by the Bank inviting bids on the plea that the valuation of his property was not correct and the property was undervalued.

8. We affirm the impugned order for reasons other than the ones recorded by the learned Single Judge. Concededly, Popat Pawar had 1/3rd undivided share in land ad-measuring 3.41 Hectare comprised in Gat No. 1913/1,2,3,4,5 and 6. Unless his share was separated the Recovery Officer could not have unilaterally identified the land comprised in Gat No. 1913/4, 5 and 6 admeasuring 0.71 Ares to be sold. We take note of the fact that a common parcel of land cannot be mathematically divided to satisfy the share of the co-owners for the reason different parts of the land may have locational advantages and dis-advantages, thereby impacting the value of the land. For example, a parcel of land may have roads on three sides. Dividing the land vertically from the main road would lead to two plots on either sides having two sides open. The carved out portion in the middle wold have only one side opening. The value of the three parcels of land which have same area would be different.

9. Under the circumstances, we hold the sale to be invalid and thus affirm the final directions issued in the impugned order noting that Popat Pawar has not filed any writ petition questioning liability fastened on him to repay the Appellant with interest on the amount which the Appellant had deposited pursuant to the sale being executed.

10. The Appeal is dismissed. No costs.

11. Needless to state, the bid amount deposited by the Appellant shall be returned by the Bank to the Appellant. We direct the Bank to do so within a period of two weeks from today.

12. We direct that Stamp Duty paid by the appellant on the sale certificate be refunded by the Collector of Stamps.

SMT. BHARATI DANGRE, J. **CHIEF JUSTICE**