

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

936 WRIT PETITION NO.15586 OF 2019

SUNIL NANA GADEKAR AND OTHERS
VERSUS
CHAGABAI RAGHUNATH GADEKAR

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Mr. A.R. Kawade, Advocate for the petitioners.
Mr. N.K. Tungar, Advocate for the respondent.

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CORAM : **AVINASH G. GHAROTE, J.**

DATE : 05.08.2021.

ORDER :

1. The learned Counsel for the petitioners, has tendered across the bar, the copy of the equitable mortgage and memorandum of deposit of title deeds dated 12.12.2001 in favour of Devgiri Nagari Sahakari Bank Ltd. in which Jubeda Begum w/o Asadullah Khan Parvej is the guarantor and the property which is the subject-matter, of the guarantee which is part and parcel of the land of Gut No. 59 to the extent of 4 Hectares, is shown as the property mortgaged. Similarly, another document which is a sale deed dated 26th August 2009 by Devgiri Nagari Sahakari Bank Ltd. in favour of Sardar Kulwantsing Khanduja has been placed on record, which relates to the property mortgaged by Jubeda Begum, as purchased by the said Sardar Kulwantsing Khanduja in auction. According to the learned Counsel, these two documents, in his submission demonstrate that the property which is owned by the petitioners and,

the property which is the subject-matter of mortgage by Jubeda Begum with Devgiri Nagari Sahakari Bank Ltd. which subsequently has been purchased by Sardar Kulwantsing Khanduja, are separate properties and therefore, according to him the petitioners, will be entitled for release of the amount of compensation, as there is no dispute, in regard to the title of the petitioners viz-a-viz the portions of land held by them from and out of the entire land of Survey No. 59. He further submits, that the copy of the Original Application No.52 of 2008 before the Debt Recovery Tribunal, in which the Central Bank of India is a party, would also demonstrate that the properties held by the petitioners, have nothing whatsoever to do, with the claim of the CBI, in view of which, the observations by the learned trial Court in it's order below Exh.42 dated 2.7.2019, would not be justified.

2. It however, is an undisputed position, that these documents were not before the learned trial Court when the impugned order below Exh. 42, was passed and therefore, it would not be proper, to test the order of the learned trial Court, on the anvil of the above two documents. It however, is a case, which is demonstrated by the above two documents, that the property which is the subject matter of a claim by Devgiri Nagari Sahakari Bank Ltd. and the Central Bank of Indian is separate and distinct from the property held by the petitioners from and out of the land Survey No. 59, in view of which it would be appropriate, if the impugned order is set aside and the matter is remanded back to the learned trial Court,

to consider Exh.42 afresh, in light of the above two documents. In that view of the matter, the impugned order below Exh. 42, is quashed and set aside and the matter is remanded back to the learned trial Court to reconsider and decide Exh. 42 afresh.

3. In so far as the order below Exh. 51 is concerned, learned Counsel for the petitioners, on instructions, does not press the petition in respect of the same.

4. The petition is accordingly partly allowed in the above terms. No order as to costs.

(AVINASH G. GHAROTE, J.)

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