

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3637 OF 2021

ALKA SHRIRANG CHAVAN AND ANR PETITIONERS

V/s.

HEMHANDRA RAJARAM BHONSALE RESPONDENTS
AND OTHERS

Mr. Siddhesh Bhole i/b Mr. Nikhil S. Ghate for the Petitioners
Mr. S. H. Kankal AGP for Respondent no. 4

CORAM : NITIN W. SAMBRE, J.

DATE: AUGUST 3, 2021.

P.C.:

1] Heard Shri. Bhole, learned counsel for the Petitioner and Shri.
Kanka, learned AGP for Respondent no. 4.

2] Facts necessary for deciding the Petition are as under.

3] Land survey no. 155 Hissa No. 3 particularly described in the
Plaint is the subject matter of present proceedings.

4] Said land was sold by one Bajirao Pokale to Genba Pokale who in turn sold it to Rajaram.

5] It appears that alleging agreement of sale dated 26/04/1973 between Respondent no. 1 and Bajirao, Suit for specific performance being R.C.S. No. 910/1986 was decreed at the behest of Respondent no. 1.

6] It appears that Respondent no. 2, defendant-judgment debtor after purchase of the land on 25/09/1985 and after initiation of aforesaid Regular Civil Suit, plotted the said land and created third party interest in favour of various persons from whom present Petitioners vide three different registered sale deeds of 1995-1996 purchased part of the Suit property to the extent of 15R land.

7] In the execution proceedings, prayer of the original judgment debtor, objecting execution proceedings under Section 47 of Code of Civil Procedure, 1908 based on the aforesaid developments was

rejected upto this Court.

8] Petitioner alleging that on 08/06/2005, he has obtained regularisation from the Pune Municipal Corporation of the property under Maharashtra Gunthewari Developments (Regularisation Upgradation and Control) Act ['Gunthewari Act' for the sake of brevity] claimed to have perfected his title over the part of the Suit property.

9] Decree holder on 09/02/2018 moved an Application Exhibit 224 in execution proceedings being RD No. 205/1991 for issuance of possession warrant which was allowed on 09/02/2018 pursuant to provisions of under Order XXI Rule 35 of the Code of Civil Procedure, 1908.

10] Based on the claim of the Petitioner that he has perfected his title by virtue of sale deed and regularisation under the Gunthewari Act, objection was preferred by Petitioner in execution proceedings of Decree dated 30/11/1990 for specific performance and possession.

Decree holder-Respondent no. 1 preferred Application under Order XXI Rule 97 of the Code of Civil Procedure, 1908 vide Exh. 238 for removal of obstruction which was resisted by the Petitioner vide reply/objection at Exh. 250. Said Objection came to be rejected vide order dated 29/02/2020 by Executing Court and allowed the application under Order XXI Rule 97 of Code of Civil Procedure, 1908 viz. Exhibit 238.

11] Petitioner-objector, feeling aggrieved preferred Regular Civil Appeal in which he has moved an application for grant of stay which was rejected vide order dated 06/07/2020 which is subject matter of challenge in the present petition.

12] I am informed that Judgment debtor-Respondent no. 2 preferred Civil Revision Application in this Court against the order dated 01/03/2021 which was dismissed by this Court vide order dated 15/04/2021 and directed the Executing Court to execute the Decree. As a consequences of above, it is claimed that Decree holder moved an application for issuance of possession warrant which is

allowed vide order dated 30/07/2021.

13] Submissions of learned counsel for the Petitioner-objector are, Objectors are the purchasers of the property without notice. According to them, after purchase of part of the Suit property, objectors have perfected their title and Decree holder has never objected to such transfer in favour of the Petitioner. According to learned counsel, Decree cannot be executed against the Petitioners in the aforesaid background as Petitioners are neither party to the Decree nor there is warrant against them. According to learned counsel for the Petitioner, since obstructionists are in lawful possession of the Suit property by virtue of valid sale deeds. It is alleged that they are not impleaded as party to the sale deed executed through court in the capacity of vendor to convey the absolute title, hence Decree holder cannot seek possession from the Petitioner.

14] Learned APP assisted the Court in understanding the matter in correct perspective and submits that Decree passed on 30/11/1990 is not taken to its logical end for last more than 30 years.

15] I have considered rival submissions.

16] Petitioners are purchasers of the Suit property after initiation of R.C.S. No. 910/1986 as it is claimed by the Petitioners that their predecessor-in-title purchased the Suit property from Judgment debtor-Defendant to the Suit sometime in 1987 and in 1995/1996, title vested in them by virtue of registered sale deed.

17] As such, claim by the Petitioners that they have purchased the property without notice cannot be accepted. Apart from above, it is quite apparent that all the efforts on the part of Judgment debtor including that of raising an objection under Section 47 of the Code of Civil Procedure, 1908 is already rejected by this Court vide order dated 14/03/2016. That being so, Petitioners cannot claim better title than his predecessor viz. Judgment debtor as he has stepped into the shoes of Judgment debtor-Respondent no. 2.

18] Apart from above, Petitioner though appears to have knowledge

about Revision being preferred by the Judgment debtor being Revision (ST) No. 7769/2021 which was dismissed on 01/03/2021, same is not brought to the notice of this Court by placing appropriate documents on record but for only mention about the same in independent list of dates and events submitted before this Court. It appears that Decree passed in 1990 is not permitted to be executed for last 30 years even though sale deed pursuant to the Decree for specific performance was executed in favour of respondent no. 1 Decree holder on 25/03/1993.

19] Assistant Superintendent, Court of Senior Division, Pune in compliance with the Decree in execution proceedings on March 25, 1993 executed the sale deed of the Suit property in favour of Decree holder whereas Petitioners have purchased part of the Suit property on 27/11/1995 and 16/11/1996. As such, it cannot be inferred that Petitioners are purchasers of the Suit property without notice.

20] Considering the very conduct of the Petitioners-Objectors referred above, this Court is prompted to infer that they are equally

responsible for prolonging the execution proceedings.

21] As such, petition fails, stands dismissed. Decree if not already executed as directed by the Executing Court, to be executed expeditiously.

[NITIN W. SAMBRE, J.]