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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.3577 OF 2019
IN
SECOND APPEAL (STAMP) NO. 5457 OF 2019

1. Annasaheb S/o Kashinath Gandhale
Age – 49 years, Occ : Agri.,

2. Ramesh S/o Kashinath Gandhale
Age – 47 years, Occ : Agri.,

Both R/o Bhokar, Tq. Shrirampur,
Dist. Ahmednagar.

... Applicants/Appellants

Versus

1. Sumatilal Zumbarlal Gujarani
Age – 65 years, Occ : Business,
R/o Gujarani Building,
Shivaji Road, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.

2. Smt. Varsha Ajitkumar Mirikar
Age – 50 years, Occ : Agril.,

3. Pooja d/o Ajitkumar Mirikar
Age – 25 years, Occ : Household,

4. Payal d/o Ajitkumar Mirikar
Age – 23 years, Occ : Household,

Nos.2 to 4 R/o c/o S.S. Bhagwat
Near CIDCO Bus Stand,
N-2, Laxmi Chowk,
Thakare Nagar, Turmala Market,
Aurangabad.

5. Shri Ratilal Ghevarchand Kothari
Age – 62 years, Occ : Trading,
R/o Shivaji Road,

Near Shalimar Medical,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

... Respondents

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Mr.C.K. Shinde – Advocate for Appellants
Mr.S.K. Shinde – Advocate for respondent no.1.

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CORAM : GAURI GODSE, J.

RESERVED ON : 17th January, 2023

PRONOUNCED ON : 21st February, 2023

JUDGMENT :

1. This civil application is filed by a third party seeking leave to prefer an appeal for challenging the judgment and decree dated 18th July, 2016 passed by the learned District Judge-2, Shrirampur in Regular Civil Appeal No.12 of 2009.

BASIC FACTS:

2. By the judgment and decree passed in Regular Civil Appeal No.12 of 2009, the first appeal preferred by original plaintiff was partly allowed and the judgment and decree dated 30th December, 2008 passed by 2nd Joint Civil Judge, Junior Division, Shrirampur in Regular Civil Suit No.24 of 2004 was set aside and suit was

partly decreed. Regular Civil Suit No.24 of 2004 was filed by Respondent No. 1/ Sumatilal Zumbarlal Gujarani (“Sumatilal”) for declaration of his title and possession over the suit property being gut no. 129, admeasuring about 2 Hectares out of total area of 3 Hectares 62 R, on the basis of a registered sale deed dated 21st October 1991 executed by the original owner Ajitkumar Mirikar (“Ajitkumar”). In the said suit a prayer was made for challenging a subsequent sale deed dated 15th February 1999 executed by respondent nos. 2 to 4 (heirs and legal representatives of Ajitkumar) in favour of respondent no. 5/Ratilal Kothari (Ratilal) in respect of gut no. 129, including the suit property. The said suit was dismissed. Hence, Sumatilal had preferred the said appeal. The first appellate court by the aforesaid judgment, partly allowed the appeal and decreed the suit in favour of Sumatilal, thereby granting relief of cancellation of the sale deed 15th February 1999 to the extent of the suit property.

3. The applicants are claiming title to property being land Gat No.129 admeasuring 3 hectares 48 R (including the suit property) through Ratilal. It is the contention of the applicants that by the aforesaid decree passed by the first appellate court, the sale deed

in favour of Ratilal has been set aside. Thus, the case of the applicants is that since by the decree passed in the said appeal, the sale deed in favour of Ratilal is set aside, the title of the present applicants pursuant to the sale deed executed by Ratilal in their favour is directly affected. It is further submitted that Ratilal has not taken any steps to challenge the said decree. Hence, it has become necessary for the applicants to challenge the decree passed by the District Court against Ratilal, for the purpose of getting clear and marketable title to the property purchased by the applicants from Ratilal. It is further submitted that in view of the sale deed executed in favour of the applicants by Ratilal, the applicants have stepped into the shoes of Ratilal and are thus, entitled to challenge the decree passed by the District Court by way of filing a Second Appeal in this Court.

4. The applicants are not parties to the proceedings. Hence, they have filed the present application for seeking leave to file second appeal for challenging the judgment and decree dated 18th July, 2016 passed by learned District Judge-2, Shrirampur in Regular Civil Appeal No. 12 of 2009 arising out of the judgment and decree 30th December, 2008 passed by the learned 2nd Joint Civil

Judge, Junior Division, Shrirampur in Regular Civil Suit No. 24 of 2004.

CONTENTIONS OF THE APPLICANTS:

5. The applicants have contended that Ajitkumar was the original owner of the property purchased by them. Ajitkumar had sold the suit property to Sumatilal by registered sale deed dated 21st October, 1991. However, Sumatilal had not applied for getting his name entered in the revenue record. After the demise of Ajitkumar, his heirs and legal representatives sold land gat no. 129 admeasuring 3 Hectares 62 R in favour of Ratilal by registered sale deed 5th February 1999. The applicants have contended that after taking search of the property and after being satisfied with the title of Ratilal, as appearing in the revenue record, the applicants purchased the said land to the extent of 3 Hectares and 48 R plus 14 R of potkharaba by two separate registered sale deeds dated 23rd September, 2008. Accordingly, the names of the applicants were entered into the revenue record by mutation entry no.2164. The applicants are thus claiming to be in possession of the said land from the date of the sale deeds in their favour. Thus, it is the contention of the applicants that they

are bonafide purchasers of the said land (including the suit property) from Ratilal.

6. It is the contention of the applicants that they were not aware about the pendency of the civil suit filed by Sumatilal, as they were never informed by Ratilal about the pending litigation. Hence, they were also unaware about the sale deed that was executed by Ajitkumar in favour of Sumatilal.
7. The applicants thus, contended that it was only after the suit summons of a Regular Civil Suit No.259 of 2018 filed by Sumatilal was served upon the applicants, they made inquiries and learnt about the aforesaid decree passed by the District Court thereby setting aside the sale in favour of Ratilal. Thus, it is the case of the applicants that only when the suit summons of the new suit filed by Sumatilal was served upon them on 23rd December, 2018, the applicants learnt about the decree passed against Ratilal in respect of the suit property which is part of the land purchased by the applicants. Hence, in such circumstances, the submission of the applicants is that they are bonafide purchasers of the suit property without notice and for valuable consideration and hence, they are entitled to challenge the decree passed against Ratilal.

LEGAL SUBMISSIONS OF THE APPLICANTS:

8. Learned counsel appearing for the applicants has placed reliance upon the provisions of Order XXII Rule 10, Order XXI Rule 16 and Section 146 of the Code of Civil Procedure, 1908 (“CPC”). It is thus submitted on behalf of the applicants that they being the aggrieved parties are entitled to file a second appeal in this court for challenging the judgment and decree passed against Ratilal, which directly affects their title in respect of the suit property. In support of the submissions made on behalf of the applicants, learned counsel has relied upon the following decisions :-

- (i) *Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P. Ltd. & others*¹
- (ii) *A.Nawab John & Ors. Vs. V.N. Subramaniam*²
- (iii) *Raj Kumar Vs. Sardari Lal and others*³
- (iv) *Amit Kumar Shaw Vs. Farid Khatoon*⁴
- (v) *Dhurandhar Prasad Singh Vs. Jai Prakash University*⁵
- (vi) *Pralhad Jaganath Jawale and ors Vs Sitabai Chander Nikam & ors*⁶
- (vii) *M/s. Tata Steel Limited, Vs M/s V.V. Minerals Mr.S.Vaikundarajan and others*⁷
- (viii) *Raghunath Prasad and others Vs. Ramavtar and others*⁸
- (ix) *Shri Subhash Manikrao Bhosale and others Vs. Shri Prabhakar Vyankatesh Kango and others*⁹

1 2013 AIR (SC) 2389

2 2012 AIR (SCW) 4248

3 2004 AIR (SCW) 470

4 2005 AIR (SC) 2209

5 2001 AIR (SC) 2552

6 2011 (7) All M.R. 255

7 2008 SCC Online Mad 703

8 Madhya Pradesh High Court in Second Appeal No. 2114 of 2005

9 High Court of Bombay in Writ Petition No.2945 of 2011

SUBMISSIONS OF THE RESPONDENT NO.1:

9. The learned counsel for respondent no. 1/Sumatilal has submitted that Sumatilal is a bonafide purchaser of the suit property from the original owner. He submitted that the title of the original owner/Ajitkumar is not disputed. Once the original owner had validly transferred his right, title and interest in favour of Sumatilal, there was no question of Ratilal claiming any right through heirs and legal representatives of Ajitkumar. Hence, the applicants are not entitled to claim any right in the suit property on the basis of a transfer effected during the pendency of the suit which was filed challenging the title of the transferor of the applicants. The learned counsel thus submitted that, grant of any leave to the applicants would deprive Sumatilal of the fruits of the decree in his favour. The learned counsel relied upon the decision of this Court in the case of *B. J. Patel Vs Vadila Dolat Ram*¹⁰. This Court in the said decision has held that an application for relief from lis pendens is discretionary relief and lis pendens is a rule and relief is an exception and thus strong grounds must be made out to deprive the plaintiff of the fruits of the litigation.

10 AIR 1982 Bombay 66

CONSIDERATION OF THE SUBMISSIONS:

10. I have considered the submissions of the learned counsel for the applicants as well as Sumatilal/respondent no.1. Respondent nos.2 to 5 i.e. heirs and legal representatives of Ajitkumar, though served were not represented at the time of hearing of the application. The applicants have pleaded that they had taken a search before entering into the transaction with Ratilal. Though the applicants have referred to the revenue entries, there is no reference in the application to any search taken by the applicants in the office of the concerned Registrar for registration of the documents for verifying the title of the suit property.
11. The title of Ajitkumar to the suit property is not disputed. It is also not disputed that Ajitkumar had sold the suit property to Sumatilal by way of a registered sale deed dated 21st October, 1991. After Ajitkumar's demise, his heirs and legal representatives executed registered sale deed dated 15th February, 1999 in favour of Ratilal. Hence, Sumatilal in whose favour Ajitkumar had executed registered sale deed, instituted Regular Civil Suit No.24 of 2004 for challenging the sale deed in favour

of Ratilal, which was executed by the heirs and legal representatives of Ajitkumar. It was the case of Sumatilal that since Ajitkumar had already alienated the suit property in his favour, heirs and legal representatives of Ajitumar had no right, title and interest in the suit property, which could have been transferred in favour of Ratilal.

12. The sale deed in favour of Sumatilal is a registered document. Hence, without making any attempts to take search from the concerned office of the Registrar for registration of documents and without issuing any public notice calling for objections, it can not be said that the applicants are bonafide purchasers without notice. So far as the contention of the applicants with respect to having no knowledge about the pending litigation is concerned, the same cannot be a ground in favour of the applicants, to challenge the decree against Ratilal. At the highest, the same can be made a ground for initiating appropriate proceedings against Ratilal.

13. The sale deed in favour of Sumatilal being a registered document the details thereof are available in the public domain, which in any event were accessible by way of search of the relevant

register maintained in the Registrar's office and hence the contention of the applicants that they were unaware about the sale in favour of Sumatilal, has no merit. In the event, the applicants have any grievance, the same can be agitated against Ratilal or against the heirs and legal representatives of Ajitkumar, who executed the said sale deed in favour of Ratilal, though they did not possess any right, title and interest in the suit property.

14. With respect to the decisions relied upon by the learned counsel on behalf of the applicants is concerned, the same are of no assistance in the facts of the case of the applicants. Sumatilal filed Regular Civil Suit No.24 of 2004 on 23rd January, 2004 against Ratilal as well as heirs and legal representatives of Ajitkumar. The said suit was decided on 30th December, 2008. The applicants are claiming title on the basis of a sale deed dated 23rd September, 2008, executed by Ratilal during the pendency of the said suit. Hence, the transaction is undoubtedly hit by the principles laid down in section 52 of the Transfer of Property Act, as the applicants are admittedly pendente lite purchasers.

CONCLUSIONS:

15. The Hon'ble Supreme Court in the case of *A. Nawab John and others* has held that the effect of section 52 of the Transfer of

Property Act is not to render transfers effected during the pendency of the suit by a party to the suit void, but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. Thus, the transfer effected during the pendency of the suit remains valid subject to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the Court. Thus, the sale deed in favour of the applicants would suffer the same fate as that of the sale deed in favour of Ratilal, which is set aside by the decree which is sought to be impugned by the applicants. The said decision of the Hon'ble Supreme Court is relied upon by the applicants to contend that in such circumstances, the applicants are entitled to challenge the decree that is passed by the District Court. Though it is held by the Hon'ble Supreme Court that application for impleadment by pendente lite purchaser should normally be allowed or considered liberally, there is no such absolute proposition laid down that the pendente lite purchaser is entitled to challenge, as a matter of right the decree passed in the suit to which he is not a party. Thus, the pendente lite purchaser is required to make out a valid ground for seeking leave to

challenge the decree, which is affecting the title of the *pendente lite* purchaser.

16. The Hon'ble Supreme Court in the case of *Raj Kumar* has held that a person having acquired an interest in the suit property during the pendency of the suit and seeking to be brought on record at the stage of the appeal can do so by reference to Section 146 of CPC, which provision being a beneficent provision should be construed liberally, so as to advance justice and not applied in a restricted or technical sense. Thus, the Hon'ble Supreme Court held that such a person can prefer an appeal being a person aggrieved. The Hon'ble Supreme Court in the case of *Raj Kumar* has also held that bringing of a *lis pendens* transferee on record is not as of right but is the discretion of the court. The Hon'ble Supreme Court has held as under:

"5. The doctrine of *lis pendens* expressed in the maxim "*ut lite pendente nihil innovetur*" (during a litigation nothing new should be introduced) has been statutorily incorporated in Section 52 of the Transfer of Property Act, 1882. **A defendant cannot, by alienating property during the pendency of litigation, venture into depriving the successful plaintiff of the fruits of the decree.** The transferee *pendente lite* is treated in the eye of the law as a

representative-in-interest of the judgment-debtor and held bound by the decree passed against the judgment-debtor though neither has the defendant chosen to bring the transferee on record by apprising his opponent and the court of the transfer made by him nor has the transferee chosen to come on record by taking recourse to Order 22 Rule 10 CPC. In case of an assignment, creation or devolution of any interest during the pendency of any suit, Order 22 Rule 10 CPC confers a discretion on the court hearing the suit to grant leave for the person in or upon whom such interest has come to vest or devolve to be brought on record. **Bringing of a *lis pendens* transferee on record is not as of right but in the discretion of the court. Though not brought on record the *lis pendens* transferee remains bound by the decree."**

(Emphasis applied)

17. The Hon'ble Supreme Court in the case of *Amit Kumar Shaw* has held that the transferee pendente lite is bound by the final decree that may be passed in the suit and such a transferee can be brought on record under Order I Rule 10 of CPC. The Hon'ble Supreme Court has also held that a person seeking impleadment should have an enforceable right. The Hon'ble Supreme Court in the case of *Amit Kumar Shaw* has held as under:

“**10.** The power of a court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. **Such right, however, will necessarily include an enforceable legal right.**”

Emphasis applied

18. The Hon’ble Supreme Court in the case of *Dhurandhar Prasad Singh* has examined the scope of section 47 of CPC. In the said decision, the Hon’ble Supreme Court has held that the language of Rule 10 of Order I of CPC do not suggest that leave can be sought by that person alone upon whom the interest has devolved. However, it simply says that the suit may be continued by the person upon whom such an interest has devolved.
19. Learned counsel for the applicants have also relied upon the decision of Madras High Court in the case of *M/s. Tata Steel Limited* wherein the Madras High Court has taken a view that though an application for impleadment of a party under Order I Rule 10 of CPC was rejected, the applicant was held to be entitled for leave to challenge the decree, which was passed against the predecessor in title of the applicant.

20. This Court in the case of *Shri Subhash Manikrao Bhosale* had allowed to add the transferee pendente lite to the proceedings under the provisions of Order I Rule 10 of CPC. This Court in the case of *Prahlad Jawale*, has dealt with the powers to grant temporary injunction preventing alienation during pendency of a suit. Hence, the said decision is not applicable to the present case.
21. Thus, in all the decisions relied upon by the Applicant, though it is held that a transferee pendente lite to the proceedings will be entitled to be heard by impleading him to the proceedings, it is also held that the power to allow the transferee to be added as a party is a discretionary power. Thus, a transferee pendente lite has no absolute right of, being heard or entitled to leave to challenge the decree passed against his transferor. The transferee has to make out a case that the transferee is a bonafide purchaser. While exercising the discretionary powers, the Court can come to a conclusion that in a given case, in view of the principles of Section 52 of the Transfer of Property Act 1882, a transferee pendente lite lacks bonafides and thus is not entitled to get leave to challenge the decree passed against his transferor.

22. The facts of the present case do not show that the Applicant is a bonafide purchaser. The plaintiff/Sumatilal has succeeded in proving his title through the original owner/Ajitkumar. Applicants are claiming through Ratilal who claimed to have acquired title from heirs and legal representative of Ajitkumar. In view of the transfer of title by Ajitkumar in favour of Sumatilal, no transferable title anytime devolved upon the heirs and legal representatives of Ajitkumar in respect of the suit property. Hence, they had no title in respect of the suit property which could be transferred in favour of Ratilal. Hence, applicants claiming through Ratilal will have no enforceable right as against Sumatilal. The learned counsel for Sumatilal has rightly relied upon the decision of this Court in the case of *B. J. Patel*, in support of his submission that, grant of any leave to the applicants would deprive Sumatilal the fruits of the decree in his favour.
23. Even otherwise, I have held that applicants have failed to show that they have taken all necessary steps to verify the title of Ratilal over the suit property and thus they cannot be said to be bonafide purchasers without notice. Hence, applicants have not made out any case for grant of leave to file second appeal to

challenge the decree against their transferor/Ratilal. Moreover, declaration of illegality in respect of the sale deed in their favour has been granted only to the extent of the suit property. Granting leave to the applicants would amount to depriving the successful plaintiff of the fruits of the decree. There is no merit in the application for seeking leave, hence the application is rejected. Since leave to file second appeal is refused, Second Appeal (Stamp) No.5457 of 2019 stands disposed of.

[GAURI GODSE, J.]