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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3634 OF 2016

Shantwan Pathaji Bhakare (Died)
Through LRs

PETITIONERS

VERSUS

Motilal Dhondiram Bhakare (Died)
Through LRs and Others

RESPONDENTS

.....
Mr. Zafar M. Pathan, Advocate for the petitioners
Mr. V. S. Bedre, Advocate for respondent No.7
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 9th MARCH, 2023

ORDER :

1. By this petition, filed under Article 226 and 227 of the Constitution of India, the petitioners impugn order date 3rd November, 2015 passed by the learned Civil Judge, Junior Division, Newasa below Exhibit-136 in Regular Darkhast No. 22 of 2001.

2. The petitioners are the decree holders who have filed RD No. 22 of 2001 for execution of the judgment and decree passed in their favour by the learned Civil Judge, Junior Division, Newasa in Regular Civil Suit No. 2 of 1989. In the said decree, original plaintiff was declared to be entitled for 1/7th share in the

suit properties and separate possession, according to the law. By clause 6 of the said decree, defendant No.1 (respondent No.1) was perpetually restrained from alienating the suit properties to anybody, in any manner, without following the due procedure of law. The decree was passed on 24th January, 2000.

3. It appears from the record that defendant No.1, on 30th August, 2007 sold portion of the suit property, to the extent of 81 Are out of Gut No. 190 of village Amalner, Taluka-Newasa to respondent No.7.

4. Respondent No.7, therefore, filed application Exhibit-136 in the Execution proceedings filed by the petitioners, claiming his impleadment in the execution proceedings, on the ground that he is *bona fide* purchaser for value, without notice and he should be heard in the execution proceedings. This application is allowed by the Executing Court, hence the present writ petition.

5. Heard learned advocate for the petitioners and the learned advocate for respondent No.7. Other respondents, though served, have not caused appearance.

6. Admittedly, the decree in favour of the petitioners is passed in the year 2000. Portion of the suit property is purchased by respondent No.7 while injunction against

defendant No.1 was in operation. Hence, respondent No. 7 is the purchaser *pendente lite*. Even execution petition is filed in the year 2001. It is, therefore, *prima facie*, clear that the sale in favour of respondent No.7 by defendant No.1 was in defiance of the injunction granted by the Trial Court, in the decree under execution.

7. The Executing Court has held that "*decree passed in R. C. S. No. 2 of 1989 has attained finality and as per decree, the defendant was restrained from alienating the suit property The question arises is that when the third party was not party to the R.C.S. No.2 of 1989 nor was concerned with the suit property till he purchased the same, how the third party can say that the decree passed in RCS No. 2 of 1989 was not legal. The submissions made to that effect are totally vague.*"

8. After observing this, the Executing Court has proceeded to allow the application of respondent No.7 holding that name of respondent No. 7 appears in seven twelve extract, in ownership column, to the extent of 81 *Are*, on the basis of Mutation Entry No. 3365 and he claims that he is in possession of the land purchased by him and, therefore, it is necessary to hear his objection before execution of the decree.

9. The reasoning adopted by the Executing Court is erroneous and cannot be sustained in view of the settled legal position. Respondent No. 7 may claim land, which may fall to the share of his vendor, in the partition. However, he cannot claim to be impleaded as party in the Execution Proceedings filed by the petitioners. The impugned order is, therefore, unsustainable in law and facts of the case.

10. In the result, the writ petition is allowed. Impugned order dated 3rd November, 2015 passed by Joint Civil Judge, Junior Division, Newasa, below Exhibit-136 in RD No. 22 of 2001, is hereby quashed and set aside with liberty to respondent No.7 to stake claim from his vendor.

[NITIN B. SURYAWANSHI]
JUDGE