

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4050 OF 2021

Shahu Corner Nagari Sahakari

Patsanstha Maryadit & Anr.

... Petitioners

V/s.

Ashwin Annaso Jadhav & Anr.

... Respondents

Mr. Pradeep D. Dalvi with Ms. Priya Dalvi for the
petitioners.

Mr. Tejpal Ingale with Mr. Yogesh P. Morbale for
respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 25, 2023

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** This is a petition under Article 227 of the Constitution of India challenging judgment and order dated 23 March 2021 passed by the learned District Judge-2, Ichalkaranji in Miscellaneous Civil Appeal No.16 of 2020. By the impugned order, the Appellate Court has restrained the cooperative society from disturbing possession of the plaintiff over the suit property till the final disposal of the suit.
- 3.** Respondent No.1 has filed Regular Civil Suit No.173 of 2019 seeking declaration that communication dated 9 March 2019

issued by the Special Recovery Officer while answering objections under Rule 107 (19-A) is illegal and consequential injunction restraining society and Special Recovery Officer from disturbing possession of the plaintiff over the suit property.

4. The right claimed by the plaintiff is based on consent decree executed by the borrower (father of the plaintiff) in favour of the plaintiff (son). It needs to be noted that the subject matter of consent decree, i.e. the property in relation to which the plaintiff claims his right was attached under sub-rule (1) of Rule 107 of the Maharashtra Cooperative Societies Rules, 1961 on 13 July 2010. Father of the plaintiff had obtained loan from the petitioner/society. On default made by the father, certificate under Section 101 of the Maharashtra Cooperative Act, 1960 was issued. Sub-section (3) of Section 101 confer status of conclusive proof to the contents of such certificate. In furtherance of execution of such certificate, the society initiated proceedings through Special Recovery Officer under Rule 107 of the Maharashtra Cooperative Societies Rules, 1961. The Special Recovery Officer, therefore, in exercise of powers under sub-rule (11) of Rule 107 attached the property.

5. Despite such attachment, the borrower (father of the plaintiff) transferred the property by consent decree to the plaintiff. Based on such consent decree, the plaintiff is claiming ownership right over the property.

6. The certificate under Section 101 of the Maharashtra Cooperative Societies Act, 1960 has attained finality. Despite

attachment, transferring such attached property by consent decree is nothing but decree obtained by collusion which has no force under Section 44 of the Evidence Act, 1872. Once such property is attached, the person deriving alleged right of ownership cannot object the execution of certificate under Section 101.

7. Despite these facts, the lower Appellate Court granted injunction in favour of the plaintiff. For the reasons stated above, such injunction cannot be sustained as the plaintiff is not entitled to claim any right based on such consent decree. The petitioner has, therefore, made out a case.

8. Rule is accordingly made absolute in terms of prayer clause (a). No costs.

(AMIT BORKAR, J.)