

AGK

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

WRIT PETITION NO.310 OF 2020

Uttam Ramchandra Yetal ... Petitioner
V/s.
Mandar Krushna Yetal & Ors. ... Respondents

**WITH
INTERIM APPLICATION NO.19601 OF 2022**

Satish Yashvant Yetal & Anr. ... Applicants
In the matter between
Uttam Ramchandra Yetal ... Petitioner
V/s.
Mandar Krushna Yetal & Ors. ... Respondents

Mr. Dhananjay D. Rananaware for the petitioner.

Mr. Umesh H. Pawar for the applicants in IA &
respondent No.4.

Dr. Uday P. Warunjikar i/by Mr. Siddhesh Pilankar for
respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 9, 2023

PC.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner is challenging order dated 4 November 2019 passed by the Trial Court rejecting applications below Exhibits 53 & 69 and allowing application below Exhibit 90.

2. The petitioner is original plaintiff who filed Regular Civil Suit NO.272 of 2008 on 1 March 2001. The Trial Court decreed the suit on 31 January 2013. Clause (2) of the decree reads thus:

“2. Defendant No.1 and 2 their agents and any person acting on their behalf are hereby permanently restrained for causing any sort of obstruction to the possession of plaintiff in suit land i.e. Eastern side half portion of Revisional Survey No.188/06 which is situated at village Devrashtra, Tal. Kadegaon Dist. Sangli.”

3. Since the judgment debtor and their agents refused to comply with the decree of injunction, the petitioner filed Regular Execution Petition No.29 of 2014 before the Executing Court. Considering pendency of the execution, the petitioner filed application below Exhibit 53 seeking injunction against judgment debtor Nos.3 and 4 restraining them from interfering with petitioner's possession over the suit property. He also filed an application below Exhibit 69 for grant of police protection as judgment debtor Nos.3 and 4 had forcibly taken sugarcane of the petitioner from the suit property. The judgment debtor No.3 filed an application below Exhibit 91 raising objection that the execution petition is not maintainable.

4. The Trial Court by the impugned order rejected applications filed below Exhibits 53 and 69 filed by the petitioner and allowed application filed by judgment debtor No.3 for dismissing the execution petition. The petitioner has challenged said orders by way of present writ petition.

5. Learned advocate for the petitioner submitted that judgment

debtor Nos.3 and 4 are the persons who are claiming through defendant Nos.1 and 2 and considering the nature of decree, the decree is binding on them. In support of his contentions, he relied on the judgment in the case of **Shreenath & Anr. v. Rajesh & Ors.** reported in (1998) 4 SCC 543 and **Jini Dharajgir & Anr. v. Shibu Mathew & Anr.** reported in 2023 SCC OnLine SC 643.

6. Per contra, learned advocate for the respondents submitted that the decree was passed only against defendant Nos. 1 and 2 and, therefore, defendant Nos.3 and 4 are not bound by the decree. Learned advocate appearing for judgment debtor No.4 (defendant No.4) submitted that he purchased the property pending execution and, therefore, the decree is not binding on him. According to him, he was not party to the suit and, therefore, his application under Order 21 Rule 97 of the Code of Civil Procedure, 1908 was maintainable.

7. On perusal of the impugned order, it appears that the executing Court dismissed the execution petition mainly on the ground that the petitioner (decree holder) failed to prove his possession over the suit property. According to the executing Court, judgment in Regular Civil Suit No. 272 of 2008 does not indicate possession of decree holder and, therefore, it cannot be said that judgment debtor No.4 is not in possession. Therefore, the petitioner is not entitled to any relief.

8. I have perused the decree passed by the Trial Court dated 31 January 2013. The decree is against defendant No.2, their agents and also against any person acting on their behalf. It is not in

dispute that the suit was filed on 1 March 2001. Defendant Nos.1 and 2 executed sale deed of the suit property in favour of their son (defendant No.3) on 12 July 2005. Defendant No.3 was, therefore, added in the suit as defendant. It appears that defendant Nos.1 and 2 sold remaining part in favour of defendant No.29 on 17 July 2005. Defendant NO.29 on 1 December 2018 (pending execution) sold the suit property to judgment debtor No.4.

9. It is not in dispute that defendant No.29 had filed suit for possession against plaintiff No.3 for possession of the suit property based on title. The said suit was dismissed on 13 December 2016 for non-prosecution. On 12 December 2018, defendant No.29 withdrew application for restoration.

10. Therefore, it appears that judgment debtor No.4 is a person in whose favour defendant No.29 executed sale deed during pendency of the execution on 1 December 2018. The defendant NO.3 and judgment debtor No.4 are, therefore, persons who are claiming through defendant Nos.1 and 2. The question, therefore, arose as to whether the persons claiming through judgment debtors are entitled to raise independent rights against the decree holder. The said position of law is no longer *res integra* in view of the judgment of the Apex Court in **Usha Sinha v. Dina Ram** reported in (2008) 7 SCC 144. The Apex Court in paragraphs 17, 26 and 29 held as under:

“**17.** Rule 102 clarifies that Rules 98 and 100 of Order 21 of the Code do not apply to transferee pendente lite. That Rule is relevant and material and may be quoted in extenso:

‘102. *Rules not applicable to transferee pendente lite.*—

Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.’

Bare reading of the Rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment-debtor is presumed to be aware of the proceedings before a court of law. He should be careful before he purchases the property which is the subject-matter of litigation. It recognises the doctrine of *lis pendens* recognised by Section 52 of the Transfer of Property Act, 1882

“52. Transfer of property pending suit relating thereto. —During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

Explanation.— For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become

unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.” .

Rule 102 of Order 21 of the Code thus takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a decree-holder will never be able to realise the fruits of his decree. Every time the decree-holder seeks a direction from a court to execute the decree, the judgment-debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the Rule has been enacted.

26. For invoking Rule 102, it is enough for the decree-holder to show that the person resisting the possession or offering obstruction is claiming his title to the property after the institution of the suit in which decree was passed and sought to be executed against the judgment-debtor. If the said condition is fulfilled, the case falls within the mischief of Rule 102 and such applicant cannot place reliance either on Rule 98 or Rule 100 of Order 21.

29. The High Court, in our opinion, rightly held that the appellant could not be said to be a “stranger” to the suit inasmuch as she was claiming right, title and interest through Defendants 4 and 5 against whom the suit was pending. She must, therefore, be presumed to be aware of the litigation which was before a competent court in the form of Title Suit No. 140 of 1999 instituted by the present respondent against the predecessor of the appellant.”

11. The Apex Court held that the persons claiming through judgment debtor are bound by the decree and are covered under

Order 21 Rule 35 of the Code of Civil Procedure, 1908. Moreover, clause (2) of the decree specifically restrains defendant Nos.1 and 2 along with their agents and any person acting on their behalf. Considering the fact that rights in favour of judgment debtor No.4 and defendant No.3 are created during pendency of the suit and during pendency of the execution, they are the persons acting on behalf of defendant Nos.1 and 2.

12. The executing Court, therefore, was not justified in rejecting the application below Exhibits 53 and 69 and allowing application below Exhibit 91. Hence, following order:

- a) Application below Exhibit 53 is allowed;
- b) Application below Exhibit 91 is rejected;
- c) In so far as application below Exhibit 69 is concerned, if the executing Court still finds that there is need of granting police protection, the executing Court shall pass appropriate orders.

13. The writ petition is disposed of in above terms. No costs.

14. In view of disposal of the writ petition, interim application stands disposed of as infructuous.

(AMIT BORKAR, J.)