

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9899 OF 2022
WITH
WRIT PETITION NO.10064 OF 2022

Sidhlingavvbai Gurubasapa Kalshetti and Anr. ... Petitioners

Versus

Wamanrao Veerswami Mithapalli

(since deceased through legal heirs)

Smt. Ushadevi Wamanrao Mithapalli and Ors. ... Respondents

— —

Mr. Nilesh Wable, for the Petitioners.

Mr. Bhushan Walimbe i/by Mr.P. G. Sarda, for the Respondents.

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : June 20, 2023.

P. C. :

1. Heard.

2. The challenge in the Writ Petition No.9899 of 2022 is to the order dated 10th January, 2020 passed by the learned 3rd Civil Judge, Senior Division, Solapur in Day Application No.15 of 2016, whereby the sale certificate was directed to be issued to the legal heirs of the Respondent No.1. Writ Petition No.10064 of 2022 has been instituted challenging the order dated 4th February, 2021 passed

below Exh.215 in Day Application No.15 of 2016, whereby the Petitioners' application for adding the decree-holder Respondent no.2 as party to the Day Application has been rejected. As the proceedings in question arise out of the same application, the Petitions were taken up for hearing together and finally disposed of by this common order.

3. The facts of the case are that the compromise decree dated 4th August, 1995 came to be passed in Special Civil Suit No. 406 of 1995, which was instituted by the Respondent No.2 against the Petitioner.. The Respondent No.2 filed the Special Darkhast No.33 of 1996 for execution of compromise decree and proclamation for sale of the property of the Petitioner-decree holder came to be issued and in the auction process, the Respondent no.1, who is the real brother of Respondent No.2 being the highest bidder succeeded and the property was purchased for sum of Rs.1,26,000/-. As the sale certificate was not issued in favour of the auction purchaser-respondent No.1, Day Application No.15 of 2016 was filed by the Respondent No.1 – auction purchaser for grant of sale certificate. The impugned orders in the present petitions arise out of the said proceedings bearing Day Application No.15 of 2016.

4. Heard Mr. Nilesh Wable, learned counsel for the Petitioners and Mr. Bhushan Walimbe, learned counsel for the Respondents.

5. Learned counsel for the Petitioners submits that the entire decretal amount was paid by the Petitioners to the Respondent No.2-decree holder. Pursuant to the payment the Regular Darkhast No.1401 of 2000 was disposed of and the order to the effect is annexed at page 25 of the petition. He would further submit that in spite of having accepted the decretal amount, the property has been auctioned at a lesser valuation and as such, the objection was raised by him as regards the valuation which has led to the passing of the impugned order dated 10th January, 2020. He would further submit that there is collusion between the Respondent No.1-auction purchaser and **Respondent no.2-decree holder**, inasmuch as, after having accepted the decretal amount from the judgment-debtor, the property has been auctioned and the Respondent No.1 auction-purchaser has been benefited. He would further submit that considering the facts of the case, the decree-holder is a **necessary party** to the Day Application.

6. Countering these submissions learned counsel appearing for the Respondent No.1-auction-purchaser submits that the entire sale amount of Rs.1,26,000/- has been paid by the auction-purchaser on 2nd February, 2000 and the Day Application No.15 of 2006 was instituted under the provisions of Order 21 Rule 94 of Code of Civil Procedure for the purpose of issuance of sale certificate. He would further submit that in the said proceedings, the decree holder is not a necessary party and it is open for the Petitioner to recover the decretal amount from the **Respondent no.2-decree holder** by instituting separate proceeding. He would further submit that the sale certificate has already been issued in his favour and the entire amount has been deposited by him. As regards the objection to the valuation which has been raised by the judgment-debtor, he has invited the attention of this Court to the findings of the Executing Court in the order dated 10th January, 2022, in which based on the evidence on record, the Executing Court has held that the objection as to valuation has not been substantiated by the judgment-debtor.

7. Considered the submissions of the parties and perused the materials on record with the assistance of the learned counsel for the parties.

8. It is not disputed that pursuant to the compromise decree entered into between the parties, the execution proceedings came to be instituted leading to issuance of proclamation of sale and the auction being conducted, in which the Respondent no.1 participated and was successful. The Day Application was filed by the successful auction purchaser seeking issuance of sale certificate as the entire auction amount was paid. It is in this proceedings that the Petitioner judgment-debtor seek to implead the decree-holder as party, on the ground that the entire decreetal amount has been paid by the judgment-debtor to the decree-holder. It is trite that only necessary or proper party is required to be impleaded. The proceedings in question arise out of the auction purchase which has been conducted pursuant to the proclamation of sale in execution proceeding. In these proceedings, the only question required to be determined is whether the sale certificate is required to be issued to the auction-purchaser. For deciding this issue, the decree holder is not a necessary party on the ground that the decree-holder is sought to be is the entire decreetal amount has been paid by the judgment-debtor to the decree-holder.

9. Considering that the entire auction proceedings were

conducted in the year 2000, and at that time there was no objection by the Petitioner either under Order 21 Rule 89 or Order 21 Rule 90 and in the auction conducted the auction-purchaser has purchased the property, the applications filed by the Petitioners is only an attempt to protract the proceedings. In these proceedings, the decree-holder is not a necessary party and it is open for the Petitioner-judgment debtor to adopt independent proceedings for seeking recovery of the decreetal amount.

10. It is the contention of the Petitioner that by virtue of the payment of decreetal amount the property ought not to have been put in the auction. It was open for the Petitioner to file an appropriate applications under the provisions of Order 21 which has not been done in the present case.

11. As regards the objection on the ground of valuation is concerned, the impugned order dated 10th January, 2022 indicates that upon assessment of the evidence which has been produced by the Petitioner, the witness in support of the application has either offered the valuation of the entire property or a totally different property and the evidence has been led as regards the valuation for assessing the

stamp duty. It is to be noted that the property was sold in auction and the reserve price accordingly fixed. There is no objection, at-least shown to this Court, which was raised by the petitioner-judgment debtor at the relevant time. It has further come in the evidence that there is no material brought on record to show the valuation of the suit property at the relevant time i.e. year 2000 and as such, the Executing Court has rightly come to the conclusion that the judgment-debtor has failed to establish any irregularity in conducting the public auction.

12. Learned counsel for the Petitioner has pointed out the provisions of Article 134 of the Limitation Act to contend that the limitation is of one year for the purpose of recovery of possession. Learned counsel for the Respondent No.1 auction purchaser submits that the application was for issuance of sale certificate and not for recovery of possession. Perusal of Article 134 of the Limitation Act shows that the limitation prescribed therein is for purpose of recovery of possession. It is not demonstrated that the Day Application No.15 of 2016 has been filed for recovery of possession and as such, Article 136 is clearly inapplicable.

13. In view of the above, I do not find any merit in the

petition, as the impugned order does not suffer from any infirmity.

Writ Petitions stand dismissed.

(Sharmila U. Deshmukh, J.)

(This order is corrected pursuant to the Speaking to the Minutes order dated 27.06.2023)