

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...
CIVIL APPLICATION (S) NO.981/2023
IN
SECOND APPEAL NO. 422/2022

Smt. Leelabai w/o Vishnuprasad Pandit

..Applicant/s

versus

Shri Yeshwant s/o Krishnaji Hawelikar(Dead)

Through LRs: 1(a) Shri Dinesh Hawelikar

and others

..Respondents

.....
Mr.U.A.Gosavi, Advocate for the original appellant

Mr.M.R. Joharapurkar, Adv. for Respondent No.2

.....

CORAM: ANIL L. PANSARE, J.

DATED : 27th July, 2023.

PC:

Heard.

2. This Application is preferred at the instance of Respondent No.2 seeking modification/review of order passed on 19th July,2023.

3. The trial Court has passed the judgment and decree in favour of the Plaintiff wherein the sale deed executed by the defendant no.1/vendor in favour of the defendant no.2/purchaser, is held not binding on the Plaintiff. The trial Court has further directed the defendant no.1 to execute the sale deed in favour of the Plaintiff. The Plaintiff is the one with whom, on earlier point of time, the defendant no.1 had entered into an agreement to sell the same property which was later sold by defendant no.1 to defendant no.2.

4. This decree was challenged before the first appellate Court. The first Appellate Court has reversed the finding and dismissed the suit with liberty to the Plaintiff to recover the amount of part consideration paid by him to the defendant no.1.

5. In the meantime, the Plaintiff filed execution proceedings and on 11th September, 2017, the executing Court has allowed the application filed by the Plaintiff. The executing court issued possession warrant with a direction to break open the lock if the suit property is found to be locked.

6. The Respondent No.2 has put forth an apprehension that since the first appellate Court's judgment and decree is now stayed by this Court, the order dated 11th September, 2017 passed by the executing Court may be enforced. This apprehension appears to be without any substance inasmuch as the trial Court's decree has merged into the first appellate Court's decree and is under challenge. In the circumstances, merely because the first appellate Court's decree has been stayed, the trial Court's decree will not revive. In that sense, no case is made out for modification of order dated 19th July, 2023.

7. With the above observations, the Civil Application is disposed of.

[ANIL L. PANSARE, J.]

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