



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 2302 OF 2023
IN SAST/919/2023 WITH CA/2303/2023
WITH CA/4765/2023

Nanasaheb Govind Borude Others

...Applicants

VERSUS

Vishwanth Gopinath Tarhal And Others

....Respondents

....

Ms. S. M. Zaware, Advocate for Applicants

Mr. M. A. J. Shaikh, Advocate for Respondent No. 1

...

CORAM : R.M. JOSHI, J

DATE : JANUARY 18, 2024

COMMON ORDER :

1. Learned Counsel for Respondent No. 1 filed affidavit-in-reply. The same is taken on record.

2. Applicants are purchasers of properties from Respondents i.e., Original Defendants in RCS No. 164/2007. The said suit came to be filed by Shashikala seeking partition and possession of the suit properties. A compromise decree was passed on 13.12.2007. By virtue of the said compromise, properties were given to the share of defendants. After 10 years of passing of the said decree, Original Plaintiff – Shashikala preferred Appeal in the year

2017 challenging the said decree on the ground that the Plaintiff and her father were forced to sign compromise terms. Grievance is also made in the First Appeal that sons of the Plaintiff in whose share properties were given by virtue of compromise decree are addicted to vices and they have disposed of properties to the third party. It is alleged that Plaintiff was not taken care by her sons. Said appeal proceeded ex-parte and eventually allowed as sons of the Plaintiff did not appear before First Appellate Court.

3. Learned Counsel for the Applicants submit that apparently judgment and decree of setting aside of compromise decree is obtained in collusion by Plaintiff and Defendants from the First Appellate Court. It is her contention that for 10 long years decree is not taken exception to but only after creation of third party interests it is sought to be challenged. It is her further contention that in the memo of appeal before First Appellate Court it is clearly stated that third party interest is created in respect of some of the suit properties and as such, purchasers become aggrieved party by setting aside of compromise decree

passed by trial Court. She further contends that delay caused in preferring present Appeal is genuine as Appellants did not have knowledge of First Appeal. According to her, having regard to the interest of the Appellants in the suit properties, and as apparently a collusive compromise decree has been obtained from the First Appellate Court, it is a fit case to grant leave to these Appellants to prefer Appeal against impugned judgment and order. As far as application for stay is concerned, it is contended that since the Appellants are bona fide purchasers of the properties for value and transaction in question has been entered into on the basis of clear title of vendor and hence, it is necessary to stay impugned judgment and decree to the extent of properties of the Appellant.

4. Learned Counsel for the Respondent opposed the contentions by claiming that the suit properties were belonging to the father of Plaintiff, as such, even her sons had no right and title therein. Thus, according to him, the decree passed by trial Court is rightly set aside in First Appeal.

5. *Prima facie* perusal of the Appeal memo filed before First Appellate Court does not indicate that decree passed by trial Court was challenged on any other ground except on the ground that compromise pursis was forced to be signed by Plaintiff and her father. Having regard to this fact, *prima facie* this Court finds no substance in the contention of learned Counsel for the Respondent about raising challenge to right of sons of Plaintiff in property. At this stage, this Court finds no reason not to accept contention of learned Counsel for Appellants that judgment and decree obtained from First Appellate Court could possibly collusive decree between mother and sons.

6. In view of the averments in the First Appeal, it is clear that third party interest is already created in favour of present Applicants, as such, at this stage, Applicants could be considered as bona fide purchasers of the properties in question. Since the Applicants were not party to the original proceedings and had no knowledge of the filing of the First Appeal, delay caused in preferring present Appeal deserves to be condoned. Having regard to the fact that the

Applicants have legitimate interest in the properties in question and they are aggrieved by the order passed by First Appellate Court, leave is granted to these Applicants to prefer Appeal.

7. Since transactions pertain to the some of the suit properties of year 2013, 2016 and 2017 prior to the filing of the Appeal by Plaintiff, it is just and necessary to stay the impugned judgment and decree passed by First Appellate Court to the extent of properties of Appellants herein.

8. In view of above, applications for leave to file appeal, condonation of delay and stay are allowed. There would be stay to the impugned judgment and decree passed by First Appellate Court to the extent of properties of Appellants till further order.

9. Appeal be registered.

(R. M. JOSHI, J.)

Malani