



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

57 WRIT PETITION NO. 2902 OF 2018

Pradip Khushalchand Bamb & anotherPetitioners

VERSUS

Dhanesh Ganeshmal Kothari & othersRespondents

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Mr. A. P. Bhandari, Advocate for the Petitioners.

Mr. A. R. Vaidya, Advocate for Respondent Nos. 1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 18th JUNE, 2024.

PER COURT :

1. By consent, heard finally at the stage of admission.
2. This Petition takes exception to the order dated 09.02.2018, passed by the Civil Judge, Senior Division, Ahmednagar, in Special Darkhast No. 14/2016 whereby the application filed by Respondent Nos. 1 and 2 under Order 21 Rule 97 of the Code of Civil Procedure is entertained by the Court.
3. The admitted facts as they appear from the record can be narrated in nutshell as follows :-

Regular Civil Suit No. 145/2011 was filed on 06.06.2011 for specific performance of contract against the original Defendants. On 09.06.2011, lis pendens notice was duly registered. Thereafter on 21.06.2011, order of status quo was passed by the Trial Court. Though the Defendants caused appearance however, subsequently the suit was not contested and it has resulted into passing of decree by judgment dated 29.02.2016. Pursuant to the said decree, Special Darkhast No. 14/2016 is filed wherein sale-deed in respect of the suit property is executed and registered through Court Commissioner on 24.04.2017. It is thereafter Respondent Nos. 1 and 2 filed application before the Execution Court by invoking provisions of Order 21 Rule 97 of the Code of Civil Procedure with averments that on 21.06.2011, a registered sale-deed was executed of suit property by Defendants in their favour.

4. Learned counsel for Petitioners submits that in the facts and circumstances of the case and owing to provision of Order 21 Rule 102 of Code of Civil Procedure, there is embargo for Execution Court to even entertain any application by transference Pendens lite. Thus, he contends that application so filed deserves to be rejected. It is his submission that in view of execution of sale-deed and handing

over of possession of suit property to Decree Holder, nothing survives in Execution proceeding.

5. Learned counsel for Respondent Nos. 1 and 2 opposed the said contention by placing reliance on the provisions of Section 19 of the Specific Relief Act. According to him, the facts of the present case indicate that there is already a registered sale-deed executed in favour of Respondent Nos. 1 and 2 by the original owner and the title has also been transferred in their favour resulting into mutation of their names in the revenue record. Thus, it is his contention that it is open for Respondent Nos. 1 and 2 to prove before the Execution Court that the said transaction is entered into good faith. In order to support his submission for maintainability of application, he sought to take aid of provisions of Section 47 of the Code of Civil Procedure in order to canvas that in the capacity of representative of the vendor he can raise any question related to the execution and as such, the order passed by the learned Execution Court, which is not final order but only permitting entertainment of the application, does not deserve interference.

6. The admitted facts from record demonstrate that on 09.06.2011 there was a notice of lis pendens so also a direction of status quo was passed against the Defendants in respect of the suit property. The suit is filed on 06.06.2011. The registered sale-deed executed by the original owner in favour of Respondent Nos. 1 and 2 is undisputedly during the pendency of the lis. They are therefore transferee pendente lite. It would be relevant to refer to Order 21 Rule 102 of Code of Civil Procedure which reads thus :-

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.

Explanation – In this rule, “transfer” includes to transfer by operation of law.

In view of admitted facts as recorded above, there is no hesitation for this Court to hold that there would be complete embargo for Respondent Nos. 1 and 2 to invoke provisions of Order 21 Rule 97 of Code of Civil Procedure.

7. The submission made by learned counsel for Respondent Nos. 1 and 2 by taking aid of Section 47 of Code of Civil Procedure is also misplaced in view of facts of case and relevant provisions. Section 47 of Code of Civil Procedure reads thus :-

47. Questions to be determined by the Court executing decree -

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[Explanation I – For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II – (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution,

discharge or satisfaction of the decree within the meaning of this section.]

This provision no doubt enables Executing court to decide any issue related to execution of decree. However, in order to apply Section 47, following essential conditions must be fulfilled such as :-

- (i) The question related to execution of decree must arise between parties to a suit or their representatives and not third party not having interest in suit or execution and,
- (ii) The question or matter at issue must be related to execution, discharge or satisfaction of decree.

Admittedly, Respondents are not parties to the suit nor they are interested in suit or execution. Moreover, issue sought to be raised does not relate to execution, discharge or satisfaction of decree. Not only Respondents are not party to suit but are not representative of party to suit, for the reason that Respondent Nos. 1 and 2 have never claimed themselves to be the representatives of judgment debtor in order to invoke the said provisions and to initiate any proceedings in connection with the execution of decree. Even otherwise, once Respondent Nos. 1 and 2 claim transfer of title in

their favour, question of them remaining representatives of the vendor does not arise.

8. As far as the contention of learned counsel for Respondent Nos. 1 and 2 that the title of Petitioners wont be perfect is concerned, this issue would not fall for consideration of executing proceeding or within jurisdiction of Execution Court to decide the same, as Executing Court is only expected to execute decree and as decree of specific performance of contract stands satisfied with execution of sale deed and registration thereof.

9. In these facts and circumstances and in view of embargo created by Order 21 Rule 102 of Code of Civil Procedure, this Court finds error being committed by the Execution Court in entertaining the application filed by Respondent Nos. 1 and 2. Hence, such order cannot sustain. Impugned order dated 09.02.2018 passed by the Civil Judge, Senior Division, Ahmendagar, below Exhibit 32 in Special Darkhast No. 14/2016 is quashed and set aside. Petition stands allowed in terms of prayer clause 'B'.

(R. M. JOSHI)
Judge