



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 WRIT PETITION NO. 3828 OF 2024

Ravindra Jagganath Bari

VERSUS

Jyoti Hiranman Dhangar And Others

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Advocate for the Petitioner : Mrs. Manjushri V. Narwade

Advocate for Respondent 3 : Mr. A.N. Nagargoje

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CORAM : ARUN R. PEDNEKER, J.

Dated : May 08, 2024

PER COURT :-

1. Heard the learned counsel for the parties. Rejoinder is taken on record.
2. On 12.4.2024 this matter was taken up for hearing at the instance of the petitioner. The learned counsel for the petitioner had submitted that the petitioner is a subsequent purchaser of the property and that the judgment debtor has not possibly initiated proceedings for stay of the decree of the trial Court and that the decree is being executed. The learned counsel submitted that the appeal is filed by the judgment debtor, but no stay has been granted. She further submitted before this Court that she would move an intervention application before the appellate Court and as such, this Court issued notice to the respondents and by way of an ad-interim order, this Court directed that till the next date, although the suit property could be attached, the same should not be sold in execution.
3. After appearance of respondent No. 3, this Court on 6.5.2024, in para 2 has observed as under :-

"2. The learned counsel for the respondent submits that the appeal was filed by the judgment debtor before the appellate court and the interim application filed in the appeal for stay of the decree was rejected. The same was carried out in writ petition before this court and this court by a detailed order has rejected the writ petition upholding the order rejecting the stay. The property was attached in August 2022 and thereafter on two occasions the property was unsuccessfully put in auction to recover the amount in terms of the decree. Notwithstanding the same, the learned counsel further submits that on 07.03.2024 the judgment debtor has allegedly sold the property to the father of the **advocate appearing for judgment debtor** and the action of the judgment debtor deprives the respondent from the fruits of the decree. The learned counsel further submits that process adopted by the petitioner and the judgment debtor is a fraud played upon the court and he seeks time to file a detailed affidavit in this matter."

4. The only correction in above para made today is that in place of words '**advocate appearing for the judgment debtor**', the words '**advocate appearing for the purchaser**' be read.

5. In view of the contested pleadings, the matter is heard today. The learned counsel appearing for the petitioner submits that the petitioner is the bonafide purchaser and she has purchased the property on 9.4.2024. The petitioner has also issued paper publication on 19.2.2024 before purchase of property and on 12.3.2024 the daughter of the petitioner appeared in the execution proceedings as advocate of the purchaser/petitioner in the execution proceedings. The learned counsel, relying upon the judgment of the Hon'ble Supreme Court in the case of **Ashan Devi and Anr. Vs. Phulwasi Devi and Ors. reported as AIR 2004 SC 511** submits that objector has to be heard under Order XXI, Rules 9 and 99 of C.P.C. and that she being the bonafide purchaser, her objections have to be considered on merits. The learned counsel has also relied upon the

judgment of Hon'ble Supreme Court in the case of Brahmdeo Choudhary Vs. Rishikesh Prasad Jaisal reported in AIR 1997 SC 856 to contend that the petitioner was not party to the suit and as such, the decree is not binding upon her.

6. The learned counsel appearing for respondent No. 3 i.e. original plaintiff in whose favour decree is passed, submits that the decree is passed by the Trial Court against which the appeal is filed and in the appeal, stay application was rejected, against which Writ Petition No. 1337/2023 was filed in this Court. This Court by order dated 24.1.2024 dismissed the writ petition filed by the original defendant Nos. 1 and 2. Meanwhile, the execution proceedings were moved by the original plaintiff and in the execution proceedings attachment warrant of the property was issued under Order XXI, Rule 54 of CPC on 31.8.2023. Thereafter, the bailiff submitted report under Order XXI, Rule 54 of CPC, which indicates that the attachment notice was pasted on the conspicuous place of the suit property and in the office of the Tahasildar and Talathi, so also the notice is published by beating drum.

7. Thereafter, the application was moved under Order 21, Rule 64 and 65 of CPC for sale of the attached property, which was allowed on 11.12.2023 by passing order below Exh. 29 in Spl. Darkhast No. 9/2022. In pursuance of the order for sale of the suit property, sale proclamation was issued on 21.4.2024. In pursuance of the said proclamation, panchanama was drawn by the bailiff on 20.1.2024 and report was submitted by the bailiff on 20.1.2023 stating that the said proclamation was pasted on

conspicuous part of the suit property under Order XXI, Rule 66 of CPC.

8. Auction of suit property was conducted in three rounds. In the first round, four persons participated and one Pratibha Chandrakant Narkhede was the highest bidder, whose bid was of Rs. 10,40,000/-. This auction was conducted on 23.2.2024. The second round of auction was conducted on 23.2.2024 and Mr. Arun Waman Jadhav was the highest bidder and his bid was of Rs.10,54,000/-. It is submitted across bar that 25% amount was also deposited on the same day. Thereafter, it is further submitted that entire auction sale proceeding was completed and the sale consideration amount has also been deposited in the Court before passing of the interim order by this Court. As such, entire auction process is completed before passing interim order by this Court except to the extent of grant of sale certificate which is yet to be issued.

9. The learned counsel for respondent No. 3/original plaintiff submits that the sale of suit property to the petitioner is completely a fraudulent transaction. He submits that on 9.3.2024 attached property is purchased by the petitioner and on 12.3.2024 Vakalatnama is filed by the daughter of the petitioner in the execution proceeding and as such, the contention of the petitioner that the petitioner is a bonafide purchase on the face of the record is not acceptable. The learned counsel further submits that in any event, property attached in execution is sought to be purchased and since the purchaser is claiming title through the judgment debtor, the same is hit by lis pendence, the petitioner is not entitled for any protection.

10. The above facts stated by respondent No. 3 are not disputed by the petitioner. However, she claims that she is bonafide purchaser who has purchased the suit property without knowledge of the decree or the attachment order.

11. In view of the fact that the petitioner has purchased the property which is attached in execution under Order 21, Rule 54 of the CPC, no title of the property can be flow to the petitioner, so also she has purchased the suit property from the judgment debtor who was restrained from alienating the suit property till the satisfaction of the decree and as such the sale is in contravention of the injunction order. The statement made by the petitioner that she is a bonafide purchaser is not acceptable on account of notice of attachment being pasted on the property attached and that a public auction of the said property was undertaken just prior to the sale. The petitioner has also orally contended before this Court that the petitioner has purchased the property by paying entirely in cash which cannot be accepted. Further, the daughter of the petitioner filed her Vakalatnama in the execution proceeding within three days of purchasing the attached property without disclosing how she became aware of the execution proceedings after purchase of the property. All these facts only indicate that the purchase of the property is not bonafide. In view of the same, present writ petition cannot be entertained and the same is dismissed. At the request of learned counsel for the petitioner, this Court has refrained from imposing any cost.

(ARUN R. PEDNEKER, J.)

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