

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.110 OF 2015.

Parshwanath Nagari Sahakari Pat
Sanstha Ltd., Karad

...Petitioner.

Versus

Pramod Shrikant Vernekar and Ors.

...Respondents.

WITH
SECOND APPEAL NO.112 OF 2014.
WITH
CIVIL APPLICATION NO.278 OF 2014.

Pramod Shrikant Vernekar and Ors.

...Appellant.

Versus

Parshwanath Nagari Sahakari Pat
Sanstha Ltd.,Karad

...Respondents.

*Mr. Sandesh Patil a/w. Mr. Prithviraj S. Gole, Mr. Shubhankar Kulkarni i/b
Mr. Prashant Jadhav for the appellant in SA No.112/2017 and for
respondent No.1 in WP No.110/2015.
Mr. Sumit Khaire for respondent No.2 in WP No.110/2015.
Mr. Ashutosh M. Kulkarni for the petitioner in WP No.110/2015 and for
respondent No.1 in SA No.112/2014.
Mr. Vinayak Kumbhar i/b Mr. N. V. Bandiwadekar for respondent No.6 in
SA No.112/2014.*

Coram : Sharmila U. Deshmukh, J.

Date : 23rd July, 2024.

P. C. :

SECOND APPEAL NO.112 OF 2014.

1. Heard.

2. Admit on the following substantial question of law:

i) Whether the Appellate Court committed an error in dismissing the Appeal No.109 of 2008 preferred by the appellant against the order passed by the Executing Court in Application under Order 21 Rule 58 of CPC without noticing that the order of the Cooperative Court pursuant to which attachment was levied had been set aside in Appeal No.162/2012 ?

ii) Whether in view of the fact that the auction of the property had taken place and the suit property was sold in favour of respondent No.6 on 28th February 2007, the appellant did not have any locus to challenge the attachment of the suit property in execution of the Co-operative Court Award ?

3. Stand over to **8th August 2024** for final hearing and final disposal.

WRIT PETITION NO.110 OF 2015.

4. Heard

5. By this petition challenge is to the judgment dated 20th August 2013 passed by the Appellate Court in Appeal No.162/ 2012. The Appellant who was not a party to the original dispute before the Trial Court filed by respondent No.1-Parshwanath Nagari Sahakari Pat Sanstha Ltd., Karad for recovery of unpaid dues Rs.8,78,000/- along with interest was decreed by the Trial Court ex-parte. The contention of the appellant is that the suit property was purchased by him and that the same was not mortgaged by the borrower with respondent No.1. The Appellate Court while holding that the appellant is not a *bona fide* purchaser of the suit property has thereafter held that in view of the registered sale deed appellant has some rights in the property and thus was required to be given an opportunity of hearing in the proceedings on merits.

6. Learned counsel for the appellant submits that the appellate Court has noted that there is no registered mortgage deed in respect of the suit property. He submits that the suit property was shown as additional guarantee given by the guarantor. He submits that the suit property was purchased by registered sale deed and was thereafter

mortgaged by the appellant with another credit Society. He submits that there is no basis for the finding that the appellant is not *bona fide* purchaser of the suit property.

7. Arguable questions are raised.

8. Rule. Learned counsel for respondents waives notice.

9. Stand over to **8th August 2024** for hearing and final disposal.

CIVIL APPLICATION NO.278 OF 2014.

10. Civil Application has been preferred seeking stay of the execution proceedings. By order of 9th October 2018, this Court had directed the parties to maintain status quo.

11. Learned counsel for the appellant submits that ad-interim relief granted may be continued as interim relief. Learned counsel for respondents oppose the said prayer.

12. Ad-interim order was passed on 9th October 2018 and continuing till today. I see no reason to not continue the said order particularly considering that connected Writ Petition was filed in the year 2015 to challenge the order of the Co-operative Appellate Court of 20th August 2013. As the execution proceedings arose out of the

order passed by the Trial Court which was since set aside by the Appellate Court, parties to maintain *status quo qua* the suit property and the execution proceedings till the hearing and final disposal of the proceedings and Co-operative proceedings.

13. In light of the above, Civil Application is disposed of with direction to all the parties to maintain *status quo* in respect of the suit property and the proceedings till the final disposal of the proceedings.

[Sharmila U. Deshmukh, J.]