



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

SECOND APPEAL NO. 508 OF 2019

(Balwant s/o Narayan Mahantare Vs. Sonaba s/o Vithoba Kamble)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri M.P. Kariya, Counsel for the appellant.
Shri D.R. Bhoyar, Counsel for the respondent.

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CORAM : ANIL L. PANSARE, J.
JANUARY 22, 2024.

Heard.

2] The appellant is the original obstructionist. The respondent is the original decree holder. The parties will be hereinafter referred to by their original nomenclature.

3] The decree holder – Sonaba had filed suit for possession against one Dattu and others vide Regular Civil Suit No. 68/1976. The suit came to be decreed in the year 1992. The decree holder – Sonaba filed execution proceedings against the judgment debtors, which came to be registered as Regular Execution No. 51/1993. The judgment debtors, and subsequent to their death their legal representatives, had not challenged the decree and, therefore, the decree has attained finality.

4] The appellant/obstructionist filed objection in terms of Order 21 Rule 97 of the Code of Civil Procedure, 1908 (for short “the Code”) on the ground that he is not bound by decree.

5] The trial Court noted that the obstructionist has purchased the property from judgment debtor no.1 and his mother vide registered sale deed dated 23/12/1993. The trial Court noted that there exist school and hostel on the land. The trial Court noted that the decree holder had knowledge of possession of the obstructionist over the suit property, however, he has inducted him in the execution proceedings only on 28/9/2011, i.e., after a lapse of about 17 years. Accordingly, taking aid of Article 136 of the Limitation Act, 1963, the trial Court held that the prayer of possession in execution proceedings, being barred by time as against the objector, the decree is not executable against him.

6] The decree holder carried the order before the First Appellate Court in Regular Civil Appeal No. 255/2012. The First Appellate Court has considered the effect of Section 52 of the Transfer of Property Act, 1882 and held that the doctrine of lis pendens would apply to the facts of the present case. The First Appellate Court noted that the obstructionist had purchased the property after passing of decree. The Court then noted the judgment of the Hon'ble Supreme Court in the case of Usha Sinha Vs. Dina Ram & Ors. [AIR 2008 SC 1997] in which the Supreme Court held that transferee pendente lite cannot obstruct the decree. The First Appellate Court noted that the execution proceedings have been filed on 28/7/1993, whereas the obstructionist had purchased the property on 23/12/1993 and, therefore, held that Article 136 of the Limitation Act would not apply.

7] The First Appellate Court then referred to Order 21 Rule 102 of the Code, 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.”

8] Considering the above provision read with Section 52 of the Transfer of Property Act and the law laid down in the case of *Usha Sinha (supra)*, the First Appellate Court held that the obstructionist, with the subsequent purchase, has stepped into the shoes of the judgment debtors and is thus bound by decree. Accordingly, the First Appellate Court set aside the order passed by the trial Court.

9] The obstructionist is before this Court challenging the judgment dated 19/8/2015 passed by the Principal District Judge, Wardha in Regular Civil Appeal No. 255/2012. Though, the learned Counsel for the appellant made an attempt to justify the order passed by the trial Court, the learned Counsel for the decree holder has rightly invited my attention to the provisions under Section 52 of the Transfer of Property Act and Order 21 Rule 102 of the Code to contend that the order passed by the First Appellate Court is in consonance with these provisions.

10] It is evident from the record that the judgment and decree was passed by the trial Court on 5/8/1992. The decree holder had filed execution proceedings on 28/7/1993. The obstructionist had purchased the property on 23/12/1993, i.e., subsequent to filing execution proceedings.

11] In the circumstances, considering the provisions of Section 52 of the Transfer of Property Act and Order 21 Rule 102 of the Code, the obstructionist cannot resist the execution of decree for possession of the suit property, the property having been transferred after passing of decree, rather after filing execution application.

12] Thus, there is no question of law much less substantial question of law involved in the appeal. The appeal is dismissed in limine.

(ANIL L. PANSARE, J.)

Sumit