



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2760 OF 2024

1. Shri. Ajit Mansinh Rajput,
Age : 37 years, Occu. : service,
R/o. Near Gram Panchayat Officer,
Bhadgaon, Tq. Shirpur, District : Dhule
2. Smt Sharla Vijaysinh Rajput
Age 34 Occu : Household,
R/o Near Gram panchayat office,
Bhadgaon, Tq. Shirpur, District : Dhule

...Petitioners

Versus

1. Shri. Gopal Keshav Pakhale,
Age : 63 years, Occu : Agriculture,
 2. Smt. Shakuntala Keshav Pakhale,
Age : 85 years, Pakhale,
 3. Shilpa Gopal Pakhale,
Age : 28 years, Occu : Household,
 4. Jagruti Gopal Pakhale,
Age : 24 years, Occu : Household
- All R/o Bahal (Rathache), At post Bahal
Tq. Chalisgaon, District : Jalgaon
5. Shidhubai Sitaram Mali,
Age : Major, Occu : Household,
R/o Waddle, Tq. Bhadgaon, District : Jalgaon
 6. Bhikan Rajaram Bagul,
Age : 50 years, Occu : Business & Agriculture
R/o Rawal Naga, Saldarwadi, Malharchowk,
Bhangal Nadikathi, Dondiacha,
Tq. Shindkheda, Dist : Dhule

...Respondents

...

Mr. Ashutosh C. Sisodiya, Advocate for the petitioners
Mr. L. V. Sangit, Advocate for Respondent Nos. 1 to 4.
Mr. Y. A. Jadhav, Advocate for Respondent Nos.5 & 6.

CORAM : ROHIT W. JOSHI, J.

DATED : 23rd JULY 2025

JUDGMENT :-

1. Respondent nos.1 to 4 are original plaintiffs who had filed a suit for recovery of money against respondent no.6 being Special Civil Suit No.102 of 2017. The said suit was transferred from the file of the learned Civil Judge Senior Division, Jalgaon to the file of the learned Civil Judge, Junior Division Chalisgaon and was renumbered as Special Civil Suit No.79 of 2018. The said suit was decreed vide judgment and decree dated 03.05.2021 whereby the respondent no.6 was directed to pay a sum of Rs. 21,25,330/- to respondent nos.1 to 4 with interest at the rate of 8% per annum till filing of the suit and interest at the rate of 6% per annum from the date of judgement till realization of amount. Respondent nos.1 to 4 filed execution petition being Special Darkhast No. 05 of 2021 for execution of the said decree.

2. Respondent No.6 was owner of a property being plot No.62, survey nos.32/1 and 32/2 admeasuring 165.36 sq. mtrs. situated at Mandal, Tq. Tahsildar Shirpur, Dist. Dhule ("hereinafter referred to as "suit property"). The petitioners are present owners of the suit

property.

3. In Special Darkhast No.5 of 2021 respondent no.1 to 4 filed an application vide 'Exhibit-5' seeking addition of the petitioners and respondent no.5 as parties to the execution petition. It is stated in the said application that the petitioner and respondent no.5 had purchased properties owned by respondent no.6 in breach of order of temporary injunction passed in the Civil Suit. It is alleged that the sale deeds are executed in order to defeat the decree to be passed in favour of respondent nos.1 to 4.

4. The present petitioners also filed an application vide 'Exhibit-20' for deletion of their names. Both these applications at 'Exhibit-5' and 'Exhibit-20' came to be decided vide common order dated 27.09.2022. The learned Executing Court has allowed the application at 'Exhibit-5' for addition of parties and rejected the application at 'Exhibit-20' filed by the present petitioners for deletion of their names. This order dated 27.09.2022 is challenged by the petitioners in the present petition.

5. Perusal of order dated 27.09.2022 will demonstrate that

respondent nos.1 to 4/deed holders contended that the sale deed in favour of the petitioners was in breach of order of temporary injunction passed in the Civil Suit. The petitioners had disputed the said contention and had also argued that the order of temporary injunction was not even filed on record. The learned Executing Court has allowed application holding that the sale transaction in favour of the petitioners was hit by Section 52 of the Transfer of Property Act since it was a lis pendence transfer. The learned Executing Court has also observed that the burden of proving that the petitioners are bonafide purchasers will have to be discharged by the petitioners in order to avoid the suit property being subjected to execution.

6. The learned Counsel for the petitioner has drawn my attention to registered sale deed dated 27.09.2016 by which respondent no.6/judgement debtor has sold the suit property to one Rajendra Mali. The learned Counsel for the petitioner has then drawn attention to sale deed dated 13.09.2019 under which the petitioners have purchased the suit property from the said Rajendra Mali. The learned Counsel for the petitioner states that the suit was filed by respondent Nos.1 to 4 on 07.09.2017 and the suit property was sold by respondent no.6-judgment debtor to Rajendra Mali on 27.09.2016 i.e.

almost one year prior to the date of filing of suit. His contention is that the finding by the learned Trial Court that the sale transaction is after filing of the suit and therefore subject to rule of lis pendence is contrary to the record, since the judgment debtor/respondent no.6 was not even owner of the said property as on the date of filing of suit.

7. Per contra, the learned Advocate for respondent nos.1 to 4/decree holders justifies the order and contends that the learned Executing Court has rightly observed that the burden of proving that the petitioners are bonafide purchasers will have to be discharged by the petitioners. He contends that no fault can be found with the order passed by the learned Executing Court directing addition of petitioners as parties to the execution petition.

8. Having heard the rival submissions as aforesaid, I find that the petitioners have not purchased the property from respondent no.6/judgment debtor. Judgement debtor/respondent 6 had sold the suit property to one Rajendra Mali (Vendor of the petitioners) vide sale deed dated 27.09.2016 almost a year before filing of the suit. Respondent Nos.1 to 4/decree holders are not seeking to join Shri.

Rajendra Mali, vendor of the petitioners as party. The registered sale deed dated 27.09.2016 which is prior to filing of the suit cannot be said to be subject to rule of lis pendence. The petitioners have not purchased the suit property from respondent no.6/judgement debtor as contended by respondent nos.1 to 4. The learned Executing Court has erred in not taking into consideration the said vital aspect of the matter while passing the impugned order. The impugned order is clearly contrary to the facts emerging from record that the petitioners have not purchased the property from respondent no.6/judgment debtor. Although the sale deed of the petitioners is after filing of the suit, they have not purchased the property from respondent no.6. The sale deed cannot be said to be subject to lis pendence as per Section 52 of the Transfer of Property Act.

9. Apart from lis pendence, no other point is urged by respondent nos.1 to 4 in support of the impugned order.

10. In view of the reasons recorded above, it needs to be held that the order dated 27.09.2022 passed by the learned Trial Court is unsustainable and is liable to be quashed.

11. Writ Petition is **allowed** by quashing and setting aside order dated 27.09.2022 passed by the learned Civil Judge, Senior Division, Chalisgaon on applications at 'Exhibit-5' and 'Exhibit-20' in Special Darkhast No.5/2021 and further by allowing the application at Exhibit-20 and rejecting the application at 'Exhibit-5' in the said execution petition.

[ROHIT W. JOSHI, J.]