



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
AURANGABAD BENCH AURANGABAD

WRIT PETITION NO. 2473 OF 2009

- 1] Sadashiv s/o. Bhanudas Nemane
Age : 60 years, Occ. : Agriculture
R/o. : Village Ashti, Tq. Ashti,
Dist. Beed
- 2] Balu s/o. Vishwanath Nemane (died)
Through L.Rs.
- 2-A] Ranjana w/o. Balu Nemane
Age : 49 years, Occ. : Agriculture
- 2-B] Ganesh s/o. Balu Nemane
Age : 32 years, Occ. : Agriculture
- 2-C] Manisha w/o. Manohar Jare
Age : 30 years, Occ. : Agriculture
- All R/o. : Village Ashti, Tq. Ashti, Dist. Beed
- 2-D] Sangita w/o. Ajinath Bawne
Age : 28 years, Occ. : Agriculture
R/o. : Beed Swangi, Tq. Ashti,
Dist. Beed
- 2-E] Ram s/o. Balu Nemane
Age : 25 years, Occ. Agriculture
R/o. : Village Ashti, Tq. Ashti,
Dist. Beed

... PETITIONERS
(Orig. Objection Petitioners)

VERSUS

- 1] Smt. Lilabai w/o. Hastimal Gandhi (died) (Orig. Decree Holder)
- 2] Digambar s/o. Girma Valhekar (died) (Orig. Judgment Debtor)
- 3] Satish s/o. Manoharrao Bhosale
Age : Major, Occ. : Agriculture
R/o. : Village Murshidapur, Tq. Ashti,
Dist. Beed (Orig. Auction Purchaser)

4] Gawubai w/o. Bhiva Walhekar
since deceased through her L.Rs.

4/A] Gayabai w/o. Vitthal Walhekar
Age : 54 years, Occ. : Agriculture,
R/o. : Sheri (Nahar), Tq. Ashti,
Dist. Beed

4/B] Vishal s/o. Vitthal Walhekar
Age : 32 years, Occ. : Agriculture,
R/o. : As above

4/C] Atul s/o. Vitthal Walhekar
Age : 27 years, Occ. : Agriculture,
R/o. : As above

4/D] Archana d/o. Vitthal Walhekar
Age : 30 years, Occ. : Household,
R/o. : As above

4/E] Rani @ Pinti d/o. Vitthal Walhekar
Age : 22 years, Occ. : Nil,
R/o. : As above

5. Shripati s/o. Kondiba Khavale
Age : Major, Occ. : Agriculture,
R/o. : Ashti, Tq. Ashti, Dist. Beed

... RESPONDENTS

...
Mr. Hrishikesh V. Tungar h/f. Mr. C.R. Deshpande – Advocate for
Petitioners

Mr. Mukul Kulkarni i/b. Mr. Nitin Gaware – Advocate for Respondent
No.3

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CORAM : SACHIN S. DESHMUKH, J.
DATE : 10.12.2025

JUDGMENT :

1. The petitioners question the order dated 28.01.2009 passed below
Exhibits 130 and 139 in Special Darkhast No.33/1987 rendered by the

learned Civil Judge, Senior Division, Beed, refusing the offer of the petitioners to deposit the decretal amount.

2. The execution proceeding bearing Special Darkhast No.33/1987, presented by respondent No.1 against respondent No.2 for execution of the decree dated 25.07.1986 passed in Special Civil Suit No.112/1983.

3. It is further contention of the petitioners that the father of petitioner No.2 is the owner of the land survey No.493/2 situated at Ashti, Tq. Ashti, Dist. Beed, on the basis of registered sale-deed dated 14.10.1985 executed by vendor namely Gawubai w/o. Bhiva Walhekar, was a surety for the judgment-debtor in the civil suit. In this backdrop, the petitioners assert that there was no occasion for attachment and sale of the property purchased by them i.e. survey No.493/2 in the execution proceedings arising out of the decree in the said special civil suit.

4. It is further submitted that the petitioners' offer, presented by virtue of application Exhibit 139 to deposit the decretal amount prior to confirmation of sale has been wrongly rejected. It is also submitted that, in the absence of a specific order confirming the sale and issuance of a sale certificate, there was no reason to reject the petitioner's application. Lastly, it is submitted that the executing Court committed an error in allowing the sale in favour of respondent No.3.

5. In the aforesaid backdrop, learned Counsel – Mr. Hrishikesh Tungar

for the petitioners submitted that the executing Court committed a serious error of law in upholding and accepting the contention of respondent No.3 regarding confirmation of the sale and issuance of the sale certificate in favour of respondent No.3 and further erred in rejecting the applications below Exhibits 130 and 139.

6. *Per contra*, learned Counsel – Mr. Mukul Kulkarni for respondent No.3 submitted that the claim put forth by the petitioners that the father of petitioner No.2 is the purchaser, is void and illegal by virtue of operation of *doctrine of lis pendens*. Admittedly, the suit was filed in the year 1983 and the petitioners purchased the subject property thereafter i.e. on 14.10.1985. Therefore, by virtue of operation of *doctrine of lis pendens*, the sale in favour of the petitioners cannot be regarded as a valid sale. It is further submitted that the petitioners does not derive any legal title under the said sale-deed. Consequently, in absence of ownership, the executing Court rightly rejected the applications presented by the petitioners.

7. Learned Counsel further submits, in relation to the conduct of the petitioners that the subject property was originally purchased in the year 1978 by the surety, namely Gawubai w/o. Bhiva Walhekar, and that the alleged re-conveyance from Gawubai in favour of the petitioners under the subsequent sale-deed was not a genuine transaction. According to respondent No.3, the earlier sale in favour of Gawubai was an out-and-

out sale and the theory of alleged re-conveyance set up by the petitioners is a hollow and sham. Consequently, the sale-deed dated 14.10.1985 executed in favour of the petitioners does not confer any valid title and therefore, the submission that the petitioners were in possession also does not warrant any consideration.

8. Learned Counsel for respondent No.3 further submits that the father of petitioner No.2 had participated in the auction and had in fact acted as a panch witness to the auction process. As such, it was not open for the petitioners to raise an objection, in view of the operation of sub-rule (3) of Rule 90 of Order XXI of the Civil Procedure Code (*'the Code' for short*), since sub-rule (3) expressly forbids the executing Court from entertaining an application to set aside the sale on any ground which the applicant could have raised on or before the date on which the sale proclamation was drawn up.

9. Admittedly, the father of petitioner No.2 having participated in the auction and thereafter having signed as a panch witness, therefore, cannot be permitted to raise objections at this stage. Although a specific plea in that regard was put forth by the present respondent, the same remained unquestioned while rejecting the application. Therefore, the petitioners are not entitled to any reliefs, much less the relief sought in the petition. Resultantly, respondent No.3, being a *bona fide* purchaser for valuable consideration, is entitled to possession pursuant to the

auction purchase.

10. Learned Counsel for respondent No.3 is further submitting that this Court was made to believe, at the time of issuing Rule, that the petitioners had offered to deposit the decretal amount prior to the confirmation of sale. However, this submission is factually incorrect. The auction was conducted on 12.11.2008, whereas application below Exhibit 133 was presented on 08.12.2008 and significantly, after the rejection of the initial application below Exhibit 130 on 02.12.2008. Thus, both applications were filed *post facto* i.e. subsequent to the third auction dated 12.11.2008. Thus, this conduct of the petitioners, itself disentitles them to any relief, much less any equitable relief.

11. Learned Counsel for respondent No.3 in support of submissions placed reliance on the judgment of **G.R. Selvaraj (Dead) through L.Rs. Vs. K.J. Prakash Kumar and Ors.** in *Civil Appeal No. 8887 of 2011*.

12. Having heard the respective learned Counsel for the litigating parties.

13. Perused the record. Rule was issued by this Court on 28.04.2009. A perusal of the order dated 20.04.2009 indicates that this Court had recorded the submission of the learned Counsel for the petitioners that the petitioner had deposited the decretal amount of Rs.43,000/- before the confirmation of sale under Order XXI Rule 92 of the Code. This

submission is factually incorrect and the purported compliance asserted by the petitioners is far away from the record.

14. The claim of the petitioners that they are owners of the subject land does not merit any consideration in view of the *doctrine of lis pendens*, since the suit was filed in the year 1983. The vendor of the petitioners had executed the surety document on 22.11.1983, whereas the alleged purchase in favour of the petitioners was effected on 14.10.1985. Admittedly, the suit was pending. Thus, the *doctrine of lis pendens* operates with full vigour on the transaction effected thereafter.

15. As such, learned Counsel for respondent No.3 is justified in submitting that the ostensible sale-deed in favour of the petitioners is void and the petitioners do not derive any title pursuant to the said sale-deed. A perusal of the application below Exhibit 130 presented by the petitioners shows that the petitioners contend that the father of petitioner No.2 had executed sale-deed in the year 1978 for security purposes and that a re-conveyance of same is unsustainable. The fallacy in this claim lies in the fact that the sale-deed in favour of the petitioner's vendor was a registered sale-deed, which was out and out sale.

16. In any case, by virtue of the *doctrine of lis pendens*, the sale in favour of the petitioners, as has been rightly submitted by learned Counsel for respondent No.3 does not confer any title upon them. Apart

from this foundational defect, the claim in Exhibit 130 seeking permission to satisfy the decree to the extent of the alleged security also does not warrant consideration for the solitary reason that the petitioners had already filed the application below Exhibit 139 seeking to deposit the decretal amount. Therefore, the challenge to the order rejecting the application below Exhibit 130 does not warrant any consideration.

17. Insofar as the application below Exhibit 133 is concerned, it was incumbent upon the petitioners to comply with the decree by satisfying the decretal amount, which carried interest at the rate of 6% per annum, the suit having been decreed on 25.07.1986. Therefore, the application presented below Exhibit 133 on 08.12.2008, offering an amount of Rs.43,000/-, cannot be regarded as complete compliance with the decretal amount. As noted hereinabove, the decretal amount carried interest at 6% per annum from the date of the decree i.e. 25.07.1986.

18. Apart from the aforesaid aspect, the fact remains that respondent No.3 is the purchaser of the subject property in the third auction conducted on 12.11.2008, which was preceded by two earlier auctions. Therefore, learned Counsel for respondent No.3 is justified in submitting that the petitioners have acquiesced their right to raise objections, in view of sub-rule (3) of Rule 90 of Order XXI of the Code, which unequivocally mandates that any objection must be raised before the date on which the proclamation of sale is drawn. Admittedly, no objection was raised by the

petitioner at the appropriate stage. The auction was conducted on 12.11.2008, whereas the objection by way of the application below Exhibit 133 was admittedly raised on 08.12.2008.

19. The reliance placed by the learned Counsel for respondent No.3 on **G.R. Selvaraj** (*supra*) lends the support to the submission as same underscores the bar against setting aside a sale where the objector has failed to raise objections at the appropriate stage, resulting in waiver. If no objection is raised before the date of sale, resultantly the objector is precluded from subsequently asserting its objection.

20. In the present case also, the petitioners had an opportunity to raise objections at the appropriate stage as contemplated under the provisions of the Code, namely Order XXI Rule 66 read with Section 140(5) of the Code. Having elected not to raise any objection before the date of sale, the petitioners are precluded from raising such objections at a later juncture. In the dint of Sub-rule (3) of Rule 90 of Order XXI of the Code which unequivocally forebears the executing Court from entertaining any application to set aside the sale on any ground which could have been taken before the proclamation of sale was drawn.

21. Thus, the order of executing Court rejecting the objections presented by the petitioners does not warrant interference.

22. Resultantly, no case is made out for exercising the extraordinary

jurisdiction under Article 227 of the Constitution of India. Accordingly, the petition, being devoid of merit, stands dismissed.

23. Rule stands discharged.

24. There shall be no order as to costs.

[SACHIN S. DESHMUKH]
JUDGE

Pooja Kale/