



(1)

501-WP-5209-2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5209 OF 2025

Dnyaneshwar Mahadu Mahajan

VERSUS

Dilip Mukundrao Patil

Mr. Vijay Bhalerao Patil, Advocate for the petitioner.

Mr. V. D. Hon, Senior Advocate i/by Mr. A. V. Hon, Advocate for the Respondent.

CORAM : KISHORE C. SANT, J.

DATE : 21st APRIL 2025

PC :-

1. Heard Mr. Patil, the learned Advocate for the petitioner and Mr. Hon, the learned Senior Advocate for the respondent.
2. The petitioner is a third party, who has filed application under Section 47 and under Order 21, Rule 97 of the Code of Civil Procedure, 1908. It is the case of the petitioner that the petitioner has entered into an agreement and has parted with the earnest amount with the judgment debtors i.e. Respondent Nos. 3 and 4. The respondent Nos. 1 and 2 filed a suit for specific performance against Respondent Nos. 3 and

4. The same came to be allowed by way of compromise. The respondent Nos. 3 and 4, therefore, filed execution proceeding. In the execution proceeding, sale-deed is executed in favour of respondent Nos. 1 and 2. The bailiff had been to the suit land for handing over the possession. It is at that stage, the petitioner came to know about the decree and the execution. It is a specific case that he is in possession of the suit property. The compromise in the suit, has taken place behind his back and in collusion with each other. It is, therefore, his case that he cannot be evicted from the land unless his rights are adjudicated in the application under Order 21 Rule 97 of C.P.C. However, learned trial Judge without adjudicating upon the rights of the parties, has simply dismissed the application without affording any opportunity of hearing to the parties. He submits that, he is put in possession in view of agreement to sale entered into between the parties in the year 2015 whereas the agreement between respondent Nos. 1 and 2 on the one hand and respondent Nos. 3 and 4 on the other hand has taken place much after the agreement with him. The agreement between respondents *inter-se* took place in the year 2017. The agreement with the petitioner is prior

in time. He, thus, prays for setting aside the impugned order dated 9th April 2025 passed by the learned Joint Civil Judge Senior Division, Jalgaon in Special Darkhast No. 07 of 2020.

3. Mr. Hon, the learned Senior Advocate vehemently opposed the petition. He submits that the application of the petitioner under Order 21 Rule 97, came to be rejected. Writ petition is, therefore, not maintainable in view of Order 21 Rule 103 of C.P.C. as the order passed in such application is a decree. He further submits that the remedy for the petitioner was to file an appeal. So far as filing of the application under Order 21 Rule 97 is concerned, he submits that though the petitioner got the knowledge in October 2023, he simply filed the application under Order 21 Rule 97. The proper remedy was, in fact, to file a suit for specific performance. On merits, he submits that in the execution proceeding, sale-deed is already executed and by the time, the matter is taken up by this Court, the possession is also taken by the bailiff and is handed over to the respondent Nos. 1 and 2. *(This statement is controverted by the learned Advocate for the petitioner.) He submits that the petitioner is still in possession.* Learned

Senior Advocate, thus, submits that the petition deserves to be dismissed.

4. In re-joinder, the learned Advocate for the petitioner submits that the petition is very much maintainable as the learned trial Court has not adjudicated upon the application but has simply rejected the application and, therefore, writ petition is maintainable.

5. Having heard the parties. It is seen that the petitioner claims his right only on the basis of agreement to sale executed in 2015. The trial Court has already observed that the said agreement is not registered. It is even not on the stamp paper. The said agreement observed that some of the document of agreement to sale are not legal document. Some of the agreement are only on a simple paper by affixing the stamp. It is clear that, there is no document registered in favour of the petitioner. This Court finds substance in the submission of learned Senior Advocate Mr. Hon that the remedy to the petitioner was to file an appeal against present order. This Court also further finds substance in his argument that, in fact, petitioner ought to have filed suit for specific performance. This Court also finds that, as on today, no right is shown in favour of the

petitioner. The petitioner, at most, has a cause of action to file suit against Respondent No.3 and 4 for specific performance. For all these reasons, this Court does not find any merit in the writ petition. Writ petition, therefore, stands dismissed. No order as to costs.

6. These observations are only for the purpose of deciding this writ petition. All the remedies of the parties are kept open.

7. With this, writ petition stands disposed off.

[KISHORE C. SANT, J.]