



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO. 483 OF 2024

Pramilabai Pitambar mali
Age 57 years, Occ. Household,
R/o Bahal, Ta. Chalisgaon,
District Jalgaon.

...PETITIONER

VERSUS

1. Gopal Keshav Pakhale
Age 65 years, Occu. Agriculture,
R/o Bahal-Rathache, Ta. Chalisgaon,
District Jalgaon.
2. Shakuntala Keshav Pakhale
Age 87 years, Occu. Agriculture,
R/o Bahal-Rathache, Ta. Chalisgaon,
District Jalgaon.
3. Shilpa Keshav Pakhale
Age 35 years, Occu. Agriculture,
R/o Bahal-Rathache, Ta. Chalisgaon,
District Jalgaon.
4. Jagrati Keshav Pakhale
Age 28 years, Occu. Agriculture,
R/o Bahal-Rathache, Ta. Chalisgaon,
District Jalgaon.
5. Bhikan Rajaram Bagul (Mali)
Age 55 years, Occu. Agriculture,
R/o Maliwada, Bahal-Rathache,
Ta. Chalisgaon, District Jalgaon,
At present, Raulnagar, Saldarwadi,
Malhar Chowk, Bank of Bhangal
River, Dondaicha, Ta. Shindkheda,
District Dhule.

6. Ajitsing Mansing Rajput
Age 37 years, Occu. Business,
R/o Opp. Grampanchayat,
Babhlaj, Ta. Shirpur,
District Dhule.
7. Sarla Vijaysing Rajput
Age Major years, Occu. Household,
R/o Opp. Grampanchayat,
Babhlaj, Ta. Shirpur,
District Dhule.
8. Sindubhai Sitaram Mali
Age Major years, Occu. Household,
R/o Wade, Ta. Bhadgaon,
District Jalgaon.
9. Rukhmabai Sitraam Mali
Age Major years, Occ. Household,
R/o Bahal, Ta. Chalisgaon,
District Jalgaon.

...RESPONDENTS

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- ◆ Mr. N. L. Chaudhari, Advocate for the Petitioner
 - ◆ Mr. M. L. Sangit, Advocate for Respondent No. 1 to 4
 - ◆ Mr. A. B. Girase and Mr. A. C. Sisodiya, Advocates for Respondent Nos. 6 and 7
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CORAM : ROHIT W. JOSHI, J.
DATE : JUNE 20, 2025

JUDGMENT:

1. Respondent Nos. 1 to 4 in the present petition had filed a suit for recovery of money against respondent no. 5 being Special Civil Suit No. 79/2018 (old Special Civil Suit No. 102/2017). The said suit came

to be decreed vide judgment and decree dated 03.05.2021 passed by the learned Civil Judge Senior Division, Chalisgaon, whereby a decree in the sum of Rs. 21,25,330/- along with interest at the rate of 8% per annum from 09.06.2012 till the date of filing of suit i.e. 07.09.2017 and further interest at the rate of 6% per annum from the date of judgment till realisation of the said amount was granted. Respondent Nos. 1 to 4 filed execution petition being Special Darkhast No. 5/2021 on 07.09.2021 for execution of the said decree passed in their favour. In the meantime, respondent no. 5 – the judgment debtor has sold land bearing Gut No. 475/2B ad-measuring 0.78 HR and land bearing Gut No. 476/2A ad-measuring 0.30 HR situated at Village Bahal, Tq. Chalisgaon and Dist. Jalgaon to the present petitioner vide sale deed dated 24.08.2021.

2. Respondent Nos. 1 to 4 filed an application for amendment of the execution petition 01.12.2022 vide '**Exhibit 37**'. The said application came to be allowed by the learned Executing Court vide order dated 10.01.2023. Thereafter, respondent nos. 1 to 4 - decree holders filed another application at '**Exhibit 49**' for attachment of the aforesaid property purchased by the petitioner. The said application is allowed vide order dated 20.04.2023. The said order of attachment dated 20.04.2023 is subject matter challenged in the present petition.

3. The learned counsel for the petitioner submits that the suit was a suit for recovery of money. The property purchased by the petitioner from respondent no. 5 was not subject matter of the civil suit. He contends that there is no material on record to remotely indicate that the petitioner was aware about, and decree passed in favour of respondent nos. 1 to 4, prior to purchase the subject property. He further contends that the sale deed by which the subject property is purchased by the petitioner is dated 24.08.2021, which is prior to 07.09.2021 i.e. the date of filing of the execution petition. His submission is that since the property is purchased by him was not subject matter of the civil suit, Section 52 of the Transfer of the Property Act will not apply and further the transfer cannot be termed to be a fraudulent transfer under Section 53 of the Transfer of Property Act. He claims to be a *bona fide* purchaser of the property.

4. Per contra, the learned counsel for respondent no. 1 to 4, the decree holders contends that the properties are sold by respondent no. 5 - judgment debtor within a short period of time after suffering decree for recovery of money. He contends that the proximity of time within which the property is sold, speaks for itself and is clearly indicative of the fact that the sale transaction is entered into in order to defeat the decree passed in their favour. He further contends that the subject properties

were initially belonging to the petitioner, the petitioner had sold these properties to respondent no. 5 vide sale deed dated 16.04.2010. He contends that the learned Executing Court has rightly observed while allowing the application for addition of the petitioner as party to the execution proceeding that the sale transaction between the petitioner and respondent no. 5 was not a *bona fide* transaction and was arrived at only in order to defeat the decree. He contends that the sale transaction is clearly a fraudulent transaction in view of Section 53 of the Transfer of Property Act.

5. It is obvious that the suit was a suit for recovery of money and the subject property was not a subject matter of the suit. Section 52 of the Transfer of Property Act is therefore, not applicable. It is also undisputed that the subject property was not attached while the civil suit was pending. Further, it is undisputed that the sale deed in favour of petitioner is executed prior to filing of the execution petition, although after passing of the decree.

6. As regards Section 53, the perusal of the averments in the application at Exhibit 37 filed by respondent nos. 1 to 4 indicate that the respondent nos. 1 to 4 have not even alleged that the petitioner has purchased the property despite being aware about the decree for

recovery of money passed against his vendor - respondent no. 5. There are no allegations of *mala fides* against the petitioner. Allegations of intention to defeat the decree are levelled only against respondent no. 5 the judgment debtor. Section 53 of the Transfer of Property Act provides that transfer of immovable property made with an intention to defeat or delay the creditors shall be voidable at the auction of the creditor. However, provision also provides that nothing in the said provision shall be applicable to a transferee in good faith for consideration. It is not the case of respondent nos. 1 to 4 that the sale deed is without consideration and as stated above bad faith is not even attributed to the petitioner.

7. The learned advocate for respondent nos. 1 to 4 has placed reliance on a judgment of this Court in the matter of ***Tata Capital Ltd. Vs. Anand Swarup Oberoi and Another*** reported in **2013 SCC OnLine Bom 378** and particularly paragraph 19 which reads as under:

“19. When it is patently shown by the very nature of the transaction relied upon by the applicant that the transfer is made between family members only to defeat and delay the claim of an independent JC, the Court can never countenance such an application.”

8. In the said case, as is apparent from the paragraph relied upon by the learned counsel for respondent nos. 1 to 4, the transaction was *inter se* between the family members and the material on record

indicated that the transaction was clearly with a view to defeat the decree. As mentioned above in the present case, the allegations of respondent nos. 1 to 4 are clearly lacking to make out a case of fraudulent transfer, against the petitioner – purchaser. The said judgment is clearly distinguishable on facts and will not be applicable to the present case.

9. In view of the reasons recorded above, the petition is allowed as under :

ORDER

(i) Order dated 20.04.2023 passed by the learned Civil Judge Senior Division, Chalisgaon on application at Exhibit 49 in the said Darkhast No. 5 of 2021 is hereby quashed and set aside.

(ii) Parties to bear their own costs.

**[ROHIT W. JOSHI]
JUDGE**