



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

WRIT PETITION NO.2165 OF 2011

- PETITIONERS** : 1. **Sumit s/o Lokeshkumar Bhalotiya,**
Aged about 31 years, Occupation business, R/o
Deshbandhu Ward, Kudwa Lane, Gondia, Tah.
& Dist. Gondia.
2. **Ashokkumar s/o Bisandas Mankani,**
Aged about 53 years, Occ: business.
3. **Nareshkumar s/o Bisandas Mankani,**
Aged about 42 years, occ: business,

Nos.2 & 3 r/o State Bank of Colony, Ganesh
Nagar, Office Narmada Colour Lab, Opp. City
Police, Gondia, Tah. & Dist. Gondia.

..VERSUS..

- RESPONDENTS** : 1. **Pramodkumar s/o Harischandra Agrawal,**
Aged about 53 years, Occupation Business, R/o
Manohar Chowk, Opp. Traffic Police, Gondia,
Tah. & Dist. Gondia.
2. **Niranjanlal s/o Bholaram Agrawal,**
Aged about 70 years, Occ: business,
3. **Ashish s/o Niranjanlal Agrawal,**
Aged about 43 years, Occ: business,

Both Nos.2 & 3 R/o 5, Sector I, Gitanjali Nagar,
Bottle House Road, Raipur.
(Amendment carried out as per order dated
4/12/12)

Mr M. R. Joharapurkar, Advocate for Petitioners.
Mr V. R. Borkar, Advocate for Respondent No.1.

ORAM : **ANIL L. PANSARE, J.**

DATE : **27th JANUARY, 2025.**

ORAL JUDGMENT

1. This is a classical case that depicts the attempt made by the judgment debtor to sabotage the execution proceedings.

2. Respondent No.1 is decree holder. Respondent No.2 is judgment debtor and Respondent No.3 is son of judgment debtor. Respondent No.1 holds a decree for recovery of money to the tune of Rs.3,26,200/-. He moved an application for attachment of the property allegedly owned by Respondent No.2 i.e. Nazul Plot No.72, Sheet No. 19, admeasuring 2475 Sq. Ft. situated at Laxmibai Ward, Gondia (hereinafter referred to as the "Suit Property"). The Suit Property was owned by Respondent No.2's father. Respondent No.2's father expired prior to filing the suit. The suit property, after death of Respondent No.2's father, was leased in favour of Respondent No.2's son i.e. Respondent No.3.

3. Grievance of Respondent No.1 was that in the lifetime of Respondent No.2, the suit property could not have been leased in favour of Respondent No.3. Accordingly, he challenged the order before this Court in Writ Petition No.5085/2008. This Court was pleased to dismiss the petition on the ground that Respondent No.1 had no locus to challenge the transfer of lease in favour of

Respondent No.3. The Court, however, opined that if the Respondent No.1 is of the view that the suit property belongs to Respondent No.2, he may seek attachment.

4. Accordingly, Respondent No.1 filed application before the Executing Court for attachment of suit property. By the impugned order, the Executing Court has allowed the application finding fault with the manner in which the property has been leased out in favour of Respondent No.3 in the lifetime of Respondent No.2. The Trial Court has held that after death of Respondent No.2's father, the property would devolve upon Respondent No.2's mother and Respondent No.2, meaning thereby that the Respondent No.2 was holding 50% of the share in the property. Accordingly, Trial Court held that Respondent No.2 was having $\frac{1}{2}$ share in the suit property. Since the property was transferred by Respondent No.3 in favour of Petitioners some time in the year 2007, the Trial Court has held that the sale deeds by which the suit property was transferred in favour of the Petitioners is not legal and valid to the extent of $\frac{1}{2}$ share belonging to Respondent No.2.

5. The question is, whether the Trial Court has exceeded its jurisdiction in going into the aspect of renewal of lease in favour of Respondent No.3 and finding fault with it. Section 47 of the Code of Civil Procedure, 1908, provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives and which relates to the execution or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. Thus, the Trial Court can be said to have been acted within the jurisdiction in examining the transfer of lease in favour of Respondent No.3.

6. Some important facts on this point will further justify the Trial Court's approach. The property under question was originally owned by the father of Respondent No.2 as a lease hold owner. The lease is said to have expired some times in the year 1958 and thereafter was not renewed. Respondent No.2's father expired some times in the year 1983. The suit came to be filed in the year 1993 and on 31.12.1994, the Respondent No.2 filed an undertaking before the Trial Court that he will not dispose of the suit property till decision of the suit. This means that the property was owned by Respondent No.2, may be that the lease was not renewed in his favour. The mother of Respondent No.2 expired in

the year 1999. This indicates that after the death of father of Respondent No.2 and since mother also expired in the year 1999, the Respondent No.2 was the only legal representative to succeed the title over the suit property, renewal of lease being formality. The suit came to be decreed in July, 1999. In the year 2003, the Respondent No.2 filed an application for renewal of lease in his favour. The Collector, Gondia, did not consider the same. In the year 2007, the Respondent No.3 filed an application for renewal of lease in his favour. The Collector, Gondia, however, *vide* order dated 15.01.2007, considered the renewal application filed by Respondent No.2 but renewed the same in favour of Respondent No.3 merely because, Respondent No.2 furnished consent letter to that effect. In fact, Nazul Surveyor had recommended to renew the lease in favour of Respondent No.2. Thus, the act of Respondent No.2 to give consent to renew the lease in favour of Respondent No.3 is nothing, but an attempt to save the property from attachment.

7. The Petitioners are aggrieved by the order of attachment because they have purchased the disputed property from Respondent No.3 *vide* registered sale-deed dated 15.02.2007 i.e. within one month from the date of renewal of lease. The

sale-deed, however, is an obvious fraud played upon the Court to take a plea that the property is not owned by Respondent No.2. The sequence of events speaks volumes about the conduct of the Respondent No.2, the decree holder. Such attempt will have to be nipped in the bud. The Trial Court, therefore, has correctly dealt with the issue. The only mistake which the Trial Court has committed is that it held that Respondent No.2 and his mother are joint owners of the suit property. It appears that the fact of Respondent No.2's mother having expired in the year 1999 was not brought to the notice of the Trial Court. After her death, the Respondent No.2 was the sole legal representative of Bholaram Agrawal (the original owner of the suit property), and therefore, will succeed the ownership by succession. The mistake committed by Trial Court stands corrected accordingly.

8. That apart and as noted above, the Respondent No.2 projected himself as owner of the suit property before the Court below by furnishing undertaking in the year 1994 to not dispose of the property. The said undertaking, coupled with his application for renewal of lease filed in the year 2003 coupled with the fact of according consent to renew the lease in favour of Respondent No.3 is an obvious mischief played to avoid obligation. The

attempt has been rightly throttled by the Trial Court. No interference is, therefore, called for in the impugned order dated 31.12.2010 passed in Special Darkhast Case No.5 of 2000 by the Civil Judge Senior Division, Gondia. The Petitioners are at liberty to deposit decretal amount to retain the property. In the event, the petitioners deposit decretal amount before the Trial Court, the order of setting aside sale-deed executed by Respondent No.3 in favour of the petitioners shall stand quashed and set aside.

9. The writ petition is accordingly **dismissed**. Rule is discharged. No order as to costs.

(ANIL L. PANSARE, J.)

TAMBE