

COMMON ORDER PASSED BELOW EXH. 21 & 23 IN
R.D. NO.03/2014 .

1. The application Exh.21 is filed by the decree holders for sale of the land Gat No. 174 in execution of decree for recovery of maintenance amount. The application Exh. 23 is filed by a third party namely Satyabhamabai Bhagwan Kamble (in short, 'applicant') for setting aside an attachment order passed below Exh. 13 by which the land Gat No. 174 adm. 1 H. 61 R situated at Bavi Tq. Bhoom Dist. Osmanabad came to be attached. Both these applications involve the common question for consideration. The findings would be based upon each other. Therefore, these applications have been taken together for common order.

2. The applicant in application Exh. 23 submitted that, the said land Gat No. 174 is owned by her and neither judgment debtors nor decree holders have any concern with this land. The present decree holder had filed Special Civil Suit No. 18/2001 which came to be decreed on 17.4.2009. In that judgment, the present applicant is held as owner and possessor of this land Gat No. 174. Still, the present decree holder has filed an application for attachment of this land which is unjust and improper. The present applicant came to know about the attachment of this land. Therefore, she has filed this application.

3. The decree holders have filed a say and submitted that, the application is not tenable. The applicant is not party to the present execution petition or to a suit filed for maintenance. They further submitted that, the executing court cannot go behind the

decree. They further submitted that, the mutation entry No. 419 has been cancelled and the name of applicant does not appear in the 7/12 extract. Moreover, the charge of maintenance has been kept on this land. No appeal has been filed against the decree passed in R.C.S. No. 122/2010. Therefore, the decree holders submitted that, the application deserves to be rejected. They submitted that this land be sold in public auction as the maintenance amount be recovered.

4. This is an execution petition filed for recovery for maintenance amount granted to the decree holders from the father-in-law of decree holder No.1 under the provisions of Hindu Adoption and Maintenance Act.

5. On perusal of the application, it is seen that, the application at Exh. 23 has been filed under the provisions of Order 21 Rule 58 of the Code of Civil Procedure (in short 'C.P.C.'). The decree holders had prayed for attachment and sale of land Gat No. 174 adm. 1 H 61 R situated at village Bavi Tq. Bhoom Dist. Osmanabad for recovery of maintenance amount. Thereafter, an order of attachment has been passed below Exh. 13 by my learned predecessor under provisions of Order 21 Rule 54 of C.P.C..

6. The learned advocate for decree holders argued that the order for sale of land Gat No. 174 adm. 1 H 61 R be passed under Order 21 rule 66 of C.P.C.. He argued that the finding of Civil Court Senior Division in Spl. Civil Suit No. 18/2001 is not binding because the Court did not take into consideration the fact that the alienation was made in breach of temporary injunction

order. He argued that the decree holders are entitled to the maintenance amount and to get the decree executed.

7. I perused the documents produced before this court by both the parties. It is seen that, one another suit for partition and separate possession of landed properties bearing Special Civil Suit No. 18/2001 was filed by the present decree holders which came to be decreed on 17.4.2009. I perused the copy of judgment passed in that suit. The issue No. 2 in that suit was in respect of the status and character of land Gat No. 174. The said issue has been decided in favour of the present applicant by holding that, the present applicant i.e. Satyabhamabai Bhagwan Kamble is the absolute owner of this land under the provisions of section 14 of the Hindu Succession Act. Therefore, it is apparently seen that, the present applicant is the owner of this land which has been attached by the order passed below Exh. 13.

8. The Hon'ble Bombay High Court in **“Bhatiya Global Trading Ltd. V/s. Asian Natural Resources (India) Ltd. And anothers (MANU/MH/2042/2016),** has held that, *“perusal of order 21 Rule 58 clearly reveals that, the legislature in its wisdom has ensured that, if a claim is made by third party, claiming to be the owner of the property which is attached, he can, instead of filing separate suit, file his objection under Order 21 Rule 58 and such an objection has to be considered by the Court. It will be necessary here to point out that, sufficient power has been given to the Executing Court to decide the application and it has been clearly mentioned in the proviso to Rule 58 (1) of Order 21 that no such claim for*

objection shall be entertained - (a) where, before the claim is preferred or objection is made, the property attached has already been sold; or (b) where, the court considers that, the claim or objection was designedly or unnecessarily delayed”.

9. Therefore, it becomes clear that, the executing Court can determine the question relating to right, title or interest in the property attached under Order 21 Rule 58 of the C.P.C.. As discussed above, it is held by the competent Civil Court in Spl.Civil Suit No. 18/2001 that the present applicant is owner of land Gat No. 174. In an application at Exh. 13, the present decree holders did not state anything about the decree passed in Spl. Civil Suit No. 18/2001. It clearly appears that, she has suppressed this fact and got the attachment order under Order 21 Rule 54 of C.P.C.. Therefore, as per the provisions of Order 21 Rule 58 (3)(a) of C.P.C., the attachment must be set aside and the property must be released from attachment. At the same time, a harsh action of imposing the cost must be taken against the decree holders. This is so, because the present decree holders were fully aware of the judgment passed in Spl. Civil Suit No. 18/2001. Still, they sought an attachment particularly of Gat No. 174 by excluding the other landed properties whereupon the charge has been kept by a judgment passed in R.C.S.No. 122/2010. This material fact had been suppressed at the time of filing an application Exh. 13. They have not stated anything as to whether the decree holders No. 2 and 3 have married or not?. Therefore, considering all these reasons, I proceed to pass the order as:-

ORDER

- 1) The application Exh. 23 is allowed.
- 2) The application Exh. 21 is rejected with cost of Rs. 1,000/- (Rs. One thousand) to be paid by decree holders which shall be credited to the Government.
- 3) The attachment of land Gat No. 174 is set aside and the land is hereby released from attachment.

Date : 8/03/2018.

Sd/-
(D. R. Mali),
2nd Jt. Civil Judge Jr. Division, Bhoom.