

(1999) 03 BOM CK 0035

In the Bombay High Court

Case No : Civil Revision Application No. 764 of 1988 with Writ Petition No. 1692 of 1988

Murlidhar Vaidya and Another

APPELLANT

Vs

Nababbi Yousufkhan, deceased through legal heirs and Others

RESPONDENT

Date of Decision : 31-03-1999

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15, 29, 31A
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16, Order 21 Rule 32, Order 21 Rule 39, 11, 115
Constitution of India, 1950 — Article 226, 227
Registration Act, 1908 — Section 18
States Reorganisation Act, 1956 — Section 119
Transfer of Property Act, 1882 — Section 2, 3, 52

Citation : (1999) 4 ALLMR 683 : (2000) 1 BomCR 670 : (2000) 2 BOMLR 891

Hon'ble Judges : S.B. Mhase, J

Bench : Single Bench

Advocate : Sudhir D. Kulkarni, for the Appellant; Suresh Kulkarni, S.B. Shaikh and S.M. Kulkarni, for the Respondent

Judgement

S.B. Mhase, J.—This Court by order dated 20-12-1988, while admitting the Civil Revision Application, has directed that the Civil Revision Application to be heard along with Writ Petition No. 1692 of 1988. In view of this order both these matters are listed together for final hearing. The parties in both the proceedings are same and the subject-matter of immovable property involved is also the same. However, both the proceedings arise in between the parties from the different proceedings, namely, writ petition arises from the proceedings u/s 29 of the Bombay Tenancy and Agricultural Lands Act filed by the respondents against the original landlord in which the petitioners also participated at a later stage and the order for delivery of the possession have been passed in favour of respondents upto the Maharashtra Revenue Tribunal in Revision Petition No. MRT/AH-V-3/88, decided on 14th September, 1988 and the said order is under

challenge in the writ petition.

2. The Civil Revision Application arises from the order of the Civil Judge, Junior Division, passed on 19-11-1988 issuing the possession warrant against the revision petitioners in respect of the land Survey No. 108 of the village Korhale in Execution Petition No. 8 of 1970.

3. Before the points involved in these cases are considered, it is necessary to state the facts.

4. The land Survey No. 108 from the village Korhale originally belonged to deceased Shaikh Chimanlal and Halimabi, widow of Hussain and after the death of Shaikh Chimanlal, Shaikh Lal Chimanlal along with Halimabi Hussain inherited the said property and the said Shaikh Lal and Halimabi jointly leased out the suit land to deceased Nababbegum on 11-7-1960 for a period of ten years for cultivation of sugarcane at the rental of Rs. 300/- per annum. The present respondents No. 1 to 3 in the writ petition are the heirs of deceased tenant Nababbi and thus they inherit the rights of deceased Nababbi in respect of the suit land. The respondents No. 4, 5 and 6 from the writ petition and the respondents No. 2-A and 2-B are the heirs of Shaikh Lal Chimanbhai. The petitioners in both the matters are purchasers of the suit land from Shaikh Lal Chimanbhai, namely the respondents No. 4, 5 and 6. For the sake of convenience, the respondents No. 4, 5 and 6 in the writ petition i.e. respondents No. 2-A and 2-B in the Civil Revision Application are referred to as "landlords", while the respondents No. 1 to 3 from the writ petition i.e. the respondents No. 1-A, 1-B and 1-C from the Civil Revision Application are referred to as the "tenants" and the petitioners, who are purchasers, are referred to as the "purchasers".

5. The dispute initially started in the year 1966 between the original tenant and the landlords. It appears that on or about 15-6-1966, the original landlord obstructed the original tenant Nababbi in cultivation of land and, therefore, Regular Civil Suit No. 157 of 1966 was filed by the original tenant against the landlord. In the said suit relief claimed was of perpetual injunction. However, the said suit was dismissed on 30-9-1966. During the pendency of the said suit, there was no temporary injunction. Thereafter the Regular Civil Appeal No. 357 of 1967 was filed and it was decided on 19-6-1969 by the Extra Assistant Judge, Ahmednagar. The said appeal was allowed and a decree for perpetual injunction was passed as against the respondent/landlord. However, it is interesting to note that the decree of the trial Court was passed on 30-9-1966, as stated earlier, but before that, it appears that on 22-9-1966 i.e. few days earlier to the dismissal of the suit by the trial Court, the respondent/landlord dispossessed the original tenant Nababbi and while the appeal was pending, it appears that on 9-10-1967, the application u/s 29 of the Bombay Tenancy and Agricultural Lands Act was filed by the original tenant Nababbi and the said application was allowed for the first time on 23-2-1972, wherein the order for possession was passed against landlord. However, while the proceedings were pending before the Tenancy

Authority u/s 29(2) of the Bombay Tenancy and Agricultural Lands Act, on 5-9-1969, the suit land was purchased by the petitioners for consideration of Rs. 20,000/-. However, when the purchasers/petitioners noticed that on 23-2-1972 the order for delivery of possession has been passed by the Tahsildar, the purchasers filed appeal before the Assistant Collector, which was dismissed on 30-6-1973. The said order of the Assistant Collector was challenged by the purchasers before the Maharashtra Revenue Tribunal and the Maharashtra Revenue Tribunal, in turn, by order dated 31-1-1975 remanded the case to the trial Court for holding fresh inquiry. Thereafter, afresh the matter was decided by the Tahsildar's Court bearing Tenancy Case No. 80 of 1975. Against that decision, the purchasers filed Tenancy Appeal No. 16 of 1887, which came to be decided against the purchasers on 18-2-1988 confirming the orders of delivery of possession to the tenant. Against that order, the revision was preferred to the Maharashtra Revenue Tribunal bearing No. MRT-V-3/88, decided on 14th September, 1988 and the Maharashtra Revenue Tribunal, by this time confirmed the orders against the purchasers. That order has been challenged by the purchasers by filling above referred writ petition.

6. Already it has been stated that the original tenant Nababbi had filed a Regular Civil Suit No. 157 of 1966, wherein a decree of perpetual injunction came to be passed against the landlord in Regular Civil Appeal No. 357 of 1967 on 19-6-1969. On the basis of that decree, the original tenant Nababbi filed Execution Petition No. 8 of 1970 before the Civil Judge, Junior Division, Koparagaon, wherein along with the landlord, the purchasers/petitioners were also joined as a judgment debtors and it is contended that even though the decree is against the landlords/original defendants, however, the said decree is binding as against the purchasers in view of section 52 of the Transfer of Property Act, namely, the purchase of the land by the purchasers being hit or affected by the principle of lis pendens and, therefore, the prayer was made that the purchasers be kept in civil prison and that in order to see that the decree is executed, the possession warrant be issued as against the landlord and the purchasers. Initially, by order dated 8-1-1973, the Civil Judge, Junior Division, Koparagaon disposed of the said execution petition as no relief can be granted as sought. Against the said judgment, the original tenant Nababbi filed a Regular Civil Appeal No. 165 of 1975 which was decided on 12-1-1977. The Appellate Court remanded the execution petitions to further hearing from the stage of bringing the respondents i.e. the purchasers in civil prison by arrest warrant. It is further directed to proceed with the matter in accordance with law and decide propriety of putting the purchasers in civil prison and further directed to give opportunity to the purchasers before passing the orders. It appears that thereafter the original tenant Nababbi expired and, therefore, her heirs, namely, the present tenants are brought on record by order dated 29-3-1986.

7. When the Darkhast was pending, it appears that on 15-10-1986, the Receiver application was filed for harvesting the Bajra crop and thus, the Receiver Advocate Shri Raktate entered into possession of the said land. It is pertinent to

note that even though the Receiver was appointed only for the purpose of harvesting the crop of Bajra, which was standing in the land in 1986, both the Counsel arguing before this Court, conceded to the fact that Receiver continued in possession of the said land as a Receiver in the absence of a further order continuing as a Receiver and presently the land is in possession of Receiver Advocate Shri Raktate. Thereafter on 19-11-1988, the Civil Judge, Junior Division, Koparagaon passed the impugned order, which runs as follows:

"Mr. Raktate Advocate in whose possession now is the land Survey No. 108 of village Korhale, (i.e. suit land described specifically in Regular Civil Suit No. 157 of 1966) as Receiver of this Court, should hand over the possession thereof, forthwith to the legal representatives of decree holder along with standing crops, if any, and make a report to that effect.

If any of judgment debtors obstruct the possession of legal representatives of decree holder or the delivery of possession by Receiver to legal representatives of decree holder, the legal representatives may take steps under Order 21, Rule 32 and Rule 39 C.P.C.

The judgment debtors No. 3 & 4 to pay costs to legal representatives of decree holder and bear their own in respect of hearing after remand.

The legal representatives of decree holder to inform the mode of execution for recovery of amount of Rs. 77.11 which are the costs under decree".

This order has been challenged by the purchasers in the Civil Revision Application referred to above

8. From the facts stated above, it is clear that while the Regular Civil Suit No. 157 of 1967 was pending before the trial Court, few days earlier to the decision of the said suit, the landlord dispossessed the tenant on 22-7-1966. It is further revealed that while the First Appeal No. 357 of 1967 was pending, the application u/s 29(2) of the Bombay Tenancy and Agricultural Lands Act was filed by the tenant on 9-10-1967 and that on the date when the appeal was decreed on 19-6-1969, the said application u/s 29 was pending. However, that application came to be allowed in favour of the tenant for the first time on 23-2-1972. However, thereafter by preferring the appeal against that order, the present purchasers participated in that proceeding before the Tenancy Court and detailed history of which has been already quoted above. That the sale deed obtained by the purchases from the landlord dated 5-9-1969 has been obtained while the proceedings u/s 29 the Bombay Tenancy and Agricultural Lands Act were pending and that the final adjudication of the Maharashtra Revenue Tribunal is in favour of the tenant for obtaining possession from landlord and purchaser. Thus, finally we find that there is a decree of a perpetual injunction passed against the landlord and so also there is an order of the tenancy authorities passed against the landlord and the purchasers that they shall deliver the possession of the suit land to the tenant.

9. The learned Counsel appearing for the purchasers submitted that the decree of a perpetual injunction cannot be enforced as against the purchasers, firstly because the purchasers are not parties to the said decree and as the decree of perpetual injunction is a personal decree, it cannot be enforced and secondly, he contended that the decree for perpetual injunction cannot be enforced as against the purchasers, because the purchaser is not a legal representative as provided in the Code of Civil Procedure. Learned Counsel Shri S.D. Kulkarni further submitted that the decree is for perpetual injunction and, therefore, the executing Court cannot direct the delivery of possession on the basis of the said decree to the decree holder and the direction given to the Commissioner Shri Raktate Advocate to deliver possession of the land to the decree holder is contrary to the decree and, therefore, said direction be set aside. In short, the challenge is to the executability of the decree on a ground that the decree of the perpetual injunction is the personal decree and that for execution of said decree for perpetual injunction, the possession warrant against judgment debtors cannot be issued. He submitted that in the present matter the possession is, undoubtedly with the purchasers.

10. The learned Counsel appearing for the respondents Mr. Kulkarni submitted that even though the decree for perpetual injunction is personal one, however, the said decree will be enforceable as against the judgment debtors, because the purchase is affected by principles of (is pendens; as on the date of the purchase, the tenancy proceedings and the civil proceedings were pending before the appropriate authorities. He further submitted that when in a decree for perpetual injunction the decree holder is dispossessed by the acts of the judgment debtor or persons claiming through the judgment debtor, the Court has to find out some efficacious way to protect the possession of the decree holder and, therefore, Court can invoke the powers u/s 151 of the CPC and issue a possession warrant.

11. In order to appreciate this contention, the first controversy which requires to be resolved is as to whether the purchase of the suit land by the petitioners/purchasers is affected by the principles of lis pendens. The above referred to facts will point out that on the day when the purchasers purchased the land, the tenancy proceedings u/s 29(2) and the Regular Civil Appeal were pending before the respective courts and, therefore, the purchase has taken place during the pendency of the litigation between the landlord and tenant. Mr. S.D. Kulkarni, learned Counsel appearing for the petitioners/purchasers submitted that the provisions of section 52, as it appear from the Central Act, cannot be applied in Maharashtra, because section 52 has undergone an amendments in the year 1939 and 1959 and, therefore, Mr. Kulkarni submitted that unless and until the lis pendens is registered with Registrar as provided in the Maharashtra Amendment, the principles of lis pendens will not be applicable. However, Mr. S.M. Kulkarni, learned Counsel appearing for the tenants submitted that those provisions will not be applicable unless and until the notification as required in section 2 of the Act of 1939 is issued by the Government extending the application of the said provisions to the rest of the Maharashtra. In reply to this,

Mr. S.D. Kulkarni, learned Counsel appearing for the purchasers submitted that by the Bombay Act No. 57 of 1959, the Act has been extended to the whole of the Maharashtra or the Bombay State and, therefore, it is not now necessary to have a notification u/s 2 of the Act of 1939.

12. No doubt, that the Act of 1939 has brought about the modification in the original section 52 in its application to the State of Bombay. As a result of this amendment, it becomes necessary for the parties to the suit or proceedings to register the said suit or the proceedings u/s 18 of the Indian Registration Act, 1908 in the manner as provided in sub-section (2) as applicable in Maharashtra. In short, as a result of this provision, when the notice of the pendency of the suit or proceedings is registered u/s 18 of the Registration Act, the public gets a notice of the pendency of the litigation in the courts and thereby those who are desirous of dealing with this land, cannot claim the benefit of bona fide purchaser for value without notice. Not only that, but it helps to the parties to maintain the status quo in respect of the disputed immovable property, because as a result of such notice, the purchasers or alienees will be affected by the principles of lis pendens and thereby those transfers and alienations will not be binding and operating as against the parties to the suit or proceeding, whose rights are affected as a result of said transfer or alienation. This amendment has been extended to the transfer of agricultural lands in Saurashtra and Hyderabad area of the State of Bombay in view of section 2 of Act of 1959. These provisions were further extended to that part of the State of Bombay to which they did not extend immediately before the commencement of amending Act of 1959, in view of section 3 of Act of 1959. The main controversy is, therefore, arising as a result of section 2 of the Act of 1939. Section 2 of the Act of 1939 is as follows:

"This Act shall apply to notices in respect of suits or proceedings which relate to immovable properties situate wholly or partly in (the Greater Bombay) with effect from such date as may be directed by the Provincial Government in this behalf by notification in the Official Gazette:

Provided that the Provincial Government may by similar notification direct that the provisions of this Act shall apply to such notices relating to immovable properties situate wholly or partly in such other area as may be specified in the said notification".

The first part of section 2 is applicable to the Greater Bombay and the second part commencing from the words "provided" is applicable to the areas other than Greater Bombay. However, what is pertinent to be noted is that after the Act has come into force, it is further necessary for the Government to issue notification making application of this amended provisions and for the areas outside the Bombay such a notification is necessary in view of the later part of section 2. Therefore, it reveals that the Act of 1939 itself does not apply even though the amendment has been assented to and it has come into force. Thus, on plain reading of Act of 1959, it will be revealed that the Legislature has extended the provisions of Act of 1939 to that part of the State of Bombay, namely, Saurashtra

and Hyderabad and it has further extended to that part of the State of Bombay, which was not earlier covered under the Act of 1939. However, it is only an extension of 1939 amendment to the areas of State of Bombay. Thus, section 2 of Act of 1939 stands also extended to the area, wherein the Act of 1959 is extended. In the result, in order to apply the provisions of Act of 1939 in the extended areas of the Act of 1959, it is further necessary that the Government should have issued a notification applying the provisions of said Act under proviso to section 2 of Act of 1939. It is admitted fact that such notification has not been so far issued. Therefore, it cannot be said that the amended provisions of section 52 of the Transfer of Property Act are in force in State of Bombay, now Maharashtra. In this respect, the reference may be made to Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, , wherein it has been observed as follows:

"By the Transfer of Property and the Indian Registration (Bombay Amendment) Act, XIV of 1939 the rule of "lis pendens" applies only when a notice of the pendency of the suit in which any right to immovable property is directly and specifically in question, is registered u/s 18 of the Registration Act. A suit relating to immovable property may, in certain circumstances, lie in a Court other than the Court within the territorial jurisdiction whereof it is situate (e.g. under Clause 12 of the Letters Patent and section 17 Code of Civil Procedure) and it appears that the Legislature intended to make the Act applicable only to transfers of title to immovables only in areas where the litigants were sufficiently sophisticated to understand the importance of registration. As Bombay Act XIV of 1939 is intended to apply to the suits of immovable property and not the Court proceeding, application of the rule of "lis pendens" is, in respect of proceedings relating to immovable properties situate in certain areas, made conditional upon the registration of the notice of the pendency of the suit. The section in terms applies only to notices in respect of suits or proceedings which relate to Immovable property in the Greater Bombay Area, it docs not apply to any suits in which property in Greater Bombay is not the subject matter in dispute. By the proviso to section 2 the Act may be extended by the Provincial Government by notification to notices relating to immovable properties situate wholly or partly in such other areas as may be specified. No notification was however issued by the appropriate Provincial Government extending the Act to notices relating to immovable properties in areas outside Greater Bombay. Where the suit was filed in the Court of Small Causes at Ahmedabad the Act did not apply and the decree in the suit was binding on the transferee to whom the property in question was transferred pending the suit.

The Transfer of Property (Bombay Provision for Uniformity and Amendment) Act, 57 of 1959 also did not apply. By that Act, amongst other things, uniformity in the provisions of the Transfer of Property Act as amended in its application to the State of Bombay as it existed after the enactment of the States Reorganization Act, 1956, was sought to be achieved. Section 3 of the Act enacted that the provisions of Bombay Act XIV of 1939 which amended the Transfer of Property

Act in its application to the pre-reorganized State of Bombay, were extended to and shall apply to that part of the State to which they did not apply immediately before the commencement of that Act. Enactment of this Act was necessitated because of section 119 of the States Reorganization Act, 1956, which continued, notwithstanding the formation of the new States the territorial extent of the laws previously in operation. It was found expedient to secure uniformity of the laws in the State, and therefore it was enacted by the State Legislature that one of the conditions of the applicability of the rule of "lis pendens" was that notice of a suit or proceeding in which any right to immovable property within the area notified u/s 2 of Act XIV of 1939, was directly and specifically in question, as registered u/s 18 of the Registration Act."

This question has been considered by the Gujrat High Court in Kanbi Vaju Vasta, Botad Vs. Kanbi Popat Vasta and Another, , following the judgment of the Apex Court of 1965 (supra). In the result, I find that the amended section by Acts of 1939 and 1959 is not applicable unless and until the notification is issued by the Government as provided in proviso to section 2 of Act of 1939 and as there is no notification issued, when the transaction in question has taken place in 1969, the question of "lis pendens" will have to be considered as per the provisions of the Central Act and not as per the provisions of the Bombay Amended Act of Transfer of Property Act. Under the Central Act, it is not necessary to register the lis pendens u/s 18 of the Registration Act or under any other Act and, therefore, the purchase of the suit land by the purchasers, while the tenancy proceedings were pending, are affected by the principles of "lis pendens".

13. The learned Counsel Shri S.D. Kulkarni further submitted that even though the purchase in favour of the petitioners is affected by the lis pendens, it cannot be said to be void and invalid, but it will be only subject to the adjudication of the proceedings which were pending on the date of the proceedings. He relied upon 1992 Mh.L.J. 248 Dinkar v. Shrirang. In para 12, this Court has observed :--

"Coming to the other contention of the learned Counsel for the appellant, it cannot be disputed that both the courts have taken the view that transfer in favour of the appellant became void by reason of doctrine of lis pendens. In the case cited (supra) the principle that the effect of the doctrine of lis pendens is not to annul the conveyance made in contravention of it, but only to render it subservient to the rights of the parties to the litigation, seems to have been overlooked. The doctrine is not applied so as to affect the title of the alienee pending litigation. ..."

No doubt, it is settled principle that the conveyance will not be void, illegal, but the said conveyance cannot affect the rights of the decree holder and, therefore, the said section provides a bar that the parties to the said suit or proceedings cannot transfer the property involved in the said pending suit or proceedings, so as to affect the rights of any party thereto under a decree or order which is likely to be passed and, therefore, that transfer will not affect the rights of the party in whose favour the order or decree is passed. In the result, in the present matter,

the sale deeds which have been executed by the landlord in favour of the present purchasers/petitioners cannot affect the rights of the tenants/respondents, which have been decreed or ordered by the respective courts and the sale deed of the purchasers/petitioners will be subservient to the orders and decrees passed by the respective courts referred to above. However, this authority does not help the petitioner/plaintiff in any manner excepting explaining the position of the sale deeds affected by the provisions of section 52 of the Transfer of Property Act.

14. Having found that the sale deed is affected by the principles of *lis pendens*, the question arises as to whether the decree for perpetual injunction can be proceeded as against the purchasers/petitioners. In this respect, it is necessary to mention that the decree passed for perpetual injunction is a personal decree as against the defendants. This view has been taken by this Court consistently in case of *Vithal v. Sakharam*, reported in 1899(1) Bom.L.R. 854. It was held that the injunction can be directed as against the parties mentioned in the decree and/or a particular persons and that would not run with the land. The injunction granted by the decree, therefore, was not executed against the transferee/purchaser of the judgment debtor. Similar view has been taken in *Dayabhai v. Bappalal*, reported in ILR 26 Bom. 140; *Jamshedji Manikji v. Hariodayal*, reported in 10 Bom.L.R. 18, AIR 1931 Bom. 280 *Amritlal v. Kantilal*, and AIR 1931 Bom. 484 *Ganesh v. Narayan*. Same is the view in 1967 Mh.L.J. 985 *Abdul Kardar Haji Hiroli v. Mrs. Judah Jacob Cohen*. However, in all these cases, the purchase was not affected by the principle of "*lis pendens*" and, therefore, whenever a decree for injunction has been passed and thereafter the judgment debtor disposes the property by sale, the decree being personal, the purchaser is not covered. Only those persons who can be said to be the legal representatives of the judgment debtor, against them the decree for perpetual injunction can be executed. However, what happens to a decree for perpetual injunction when the transfer is affected by the principle of *lis pendens* has been dealt with by this Court in AIR 1927 Bom. 93 *Krishnabai v. Savlaram*. The Division Bench of this Court, after quoting the above referred cases has observed:

"But a further complication has arisen in virtue of the transfer to the present respondent No. 3 by the widows of the original defendant. It is urged that though now u/s 50 corresponding to the old section 234 of the Civil P.C. the Darkhast may be competent against the legal representatives it is not so against the transferee. But it is clear that this transfer was during the pendency of the execution proceedings. u/s 52 of the Transfer of Property Act it is provided that:

During the active prosecution, in any Court having authority in British India.. of a contentious suit or proceeding in which any right to immovable property is directly and specifically in question the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein except under the authority of the court and on such terms as it may impose.

Here the transfer was not under the authority of the Court, and it was made during the pendency of a contentious proceeding in execution of this decree. It seems to me that this transfer cannot be allowed to affect the rights of the present plaintiff. He is entitled to such order as he would have obtained under the Darkhast if there had been no transfer. If the mere fact of the transfer were accepted as a ground for disallowing his application for execution, it would mean that the transfer is allowed to affect the rights of the plaintiff, which would be contrary to the provisions of section 52 of the Transfer of Property Act.

It has been urged on behalf of the appellants that the word "rights" in section 52 has reference to that substantive rights and not to a matter of procedure and that in the present case the right of the plaintiff to be affected is not a substantial right to the property, but to the particular procedure. No authority has been cited in support of this restricted meaning of the word "rights" as used in section 52; and it seems to me that it is not merely a matter of procedure. It does affect the right of the plaintiff to get the obstruction removed under the decree. He had got a certain right under the decree, which he would be entitled to enforce in execution of the decree. And the argument in substance comes to this; that in virtue of that transfer such a right may be lost without contravening the provisions of section 52. I am not prepared to accept this contention of the plaintiffs..."

The same view has been taken by another Division Bench in AIR 1931 Bom. 280 *Amritlal v. Kantilal*, wherein it has been observed that the decree for injunction does not run with the land and in the absence of any statutory provision, such a decree cannot be enforced against the surviving members of a joint family or against the purchaser from the judgment debtor. But where the sons of the judgment debtor are brought on record as his legal representatives u/s 50, the decree can be executed against them and so also against the transferees from the legal representatives, u/s 52 of the Transfer of Property Act. On the same principle viz, that they are bound by the result of the execution proceedings u/s 52 of the Transfer of Property Act, the transferees from the original judgment debtor during the pendency of execution proceedings against him can be held to be similarly bound and are liable to be proceeded against in execution. Thus, it is established that when the transfer is affected by *lis pendens*, even a decree for perpetual injunction can be enforced as against the transferee from the judgment debtor or a transferee from the legal representatives of the judgment debtor.

15. The above discussion shows that the decree of perpetual injunction even though found to be personal one, can be enforced as against the purchaser pending litigation from the judgment debtor. Now, the question arises in what manner the decree for perpetual injunction should be executed as against such purchasers. The learned Counsel for the petitioners submitted that in that eventuality, Order 21, Rule 32 of the CPC provides for the manner in which the decree for perpetual injunction can be executed. He submitted that, therefore, the said Rule provides for detention in civil prison or by attachment of the

property or by both ways. He further submitted that sub-rule (3) provides that if the attachment in respect of the property remains in force for six months and the judgment debtor has not obeyed the decree, such property may be sold and out of the proceeds, the Court may award the decree holder such compensation as it may deem fit. He further made reference to sub-section (5) and submitted that it will apply in case if certain acts are required to be done by the judgment debtor, the Court may get it done through decree holder or some other person and the expenses for the same be recovered from the judgment debtor. He submitted, except this, no other provision has provided for execution of the decree of a perpetual injunction and, therefore, he submitted that the delivery of possession cannot be directed under Order 21, Rule 32 of the CPC and submitted that the order passed by the executing Court thus, not in consonance with Rule 32 requires to be set aside. He further submitted that if the CPC has provided the machinery and the procedure for execution of the decree, no other procedure can be adopted by the Court by invoking the powers u/s 151 of the Code of Civil Procedure. He relied upon AIR 1981 Del 84 Sunder Dass v. Mulakh Raj, Sarup Singh Vs. Daryodhan Singh, and Arjun Singh Vs. Mohindra Kumar and Others, and submitted that the order for delivery of possession passed by the Executing Court be quashed and set aside. However, the learned Counsel for respondents, in order to justify the trial Court's order for delivery of possession has relied upon Mst. Hajra Vs. Abdul Majeed Matoo and Others, and Sadashivappa Vs. Shivayogappa, and submitted that in appropriate case, the Court can take steps to see that the decree holder gets possession of the property.

16. In AIR 1981 Del 85 Sunder Dass v. Mulakh Raj, the decree of a permanent injunction was passed in favour of the plaintiff restraining the defendants from interfering with the possession of the plaintiff in relation to certain plots. In spite of the decree, the defendants disobeyed the decree and dispossessed the plaintiff. On such a act, the execution petition was filed and under Order 21, Rule 32 of the Code of Civil Procedure, the judgment debtors were detained in prison. In appeal even though the order was confirmed, the period of detention was reduced to six weeks. Thereafter the decree holder filed an application purporting to be u/s 151 of the CPC stating inter alia that the judgment debtor has taken unauthorised possession of the suit premises, and that Court may be pleased to issue warrant of possession against judgment debtor. On the basis of this application, the possession warrant was issued by the Executing Court. The following paragraphs No. 9 and 11 of Sarup Singh Vs. Daryodhan Singh, , were relied while deciding the case of Sunder Dass (supra) :

"(9) The learned Counsel for the respondent has lastly urged that the Court cannot allow its decree to be disobeyed contumaciously and it must devise some procedure under Clause (e) of section 51 of the Code and in exercise of the said power, the execution Court must use force to compel the judgment-debtor to vacate the premises. Clause (e) contains a residuary provision which comes into play where the decree in question cannot be executed according to Clauses (a) to (d) or any other provision of law. Section 51 itself begins with the qualifying

phrase "subject to such conditions and limitation" as may be prescribed, that is to say prescribed by statutory rules of the Code as defined by section 2. This clause came up for consideration before a Division Bench of the High Court of Punjab, Circuit Bench at Delhi in *Murari Lal Vs. Nawal Kishore and Others*, , where S.S. Dulat and D.K. Mahajan, JJ., followed a Full Bench authority of the High Court of Anandi Lal and Others Vs. Ram Sarup and Others, and observed that all the various modes mentioned in section 51 were not open to an execution Court in every case and it was to be guided by the procedure laid down in the schedule and must resort to the method appropriate to each case and that a decree for mandatory injunction had to be executed by attachment and sale of the judgment debtors property and by detention in civil prison as provided by Rule 32(1) of Order XXI of the Code and since this guide had been provided, no resort could be had to Clause (e) of section 51.

The Division Bench repelled the argument advanced before it that the decree would be rendered useless unless it was executed in accordance with sub-rule (5) and the Court observed that the decree had to be executed in accordance with Rule 32(1) and merely because another mode of execution which was sought and was not available, would not render the decree useless. The Counsel for the petitioner has also relied upon an authority of the Supreme Court in *Municipal Corporation for Greater Bombay Vs. Lala Pancham of Bombay and Others*, , in support of the proposition that there are certain limitations which the law confers upon the powers of the courts and it is duty of a Court of law not only to do justice but to ensure that justice is done only according to law and not otherwise. Reference may also be made to *Arjun Singh Vs. Mohindra Kumar and Others*, , where the Court observed that where there are specific provisions of the Code dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or jurisdiction that may be exercised in relation to a matter, the inherent power of the Court cannot be invoked in order to cut across the powers conferred by the Code; the prohibition contained in Code need not be express, but may be implied or be implicit from the very nature of things that it makes for covering the contingencies to which it relates.

(10) Applying the dictum of the Supreme Court, it follows that a decree for injunction must be executed in the manner provided by Rule 32, and the issue of a warrant for delivery of possession in execution of a decree for injunction is not justified either by Rule 35 of Order XXI or Clause (e) of section 51....

Judges deciding the case of *Sunder Dass* have also referred to following paragraphs of *Sarup Singh Vs. Daryodhan Singh*, with regard to scope of sub-rule (5) of Order 32 of the Code of Civil Procedure:

(6) Sub-rule (5) of Rule 32, under which the decree holder seeks relief, authorises the Court to direct that the act required to be done, may be done, so far as practicable, by the decree holder or some other person appointed by the Court at the cost of the judgment debtor. The statutory illustration illustrates the

scope of the rule by an instance that were a person of little substance erects a building which renders a family mansion uninhabitable and the judgment debtor, in spite of his detention in prison and attachment of property, declines to obey the decree, the Court may remove the building which the decree has directed to do and may recover the cost from the judgment debtor in execution proceedings. This shows that the act which is authorised by sub-rule (5) to be done consists of something which may be done so far as practicable by the decree-holder himself at the expense of the judgment debtor. The decree of the Court directing the judgment debtor to quit and vacate the premises cannot constitute an act which may, without the will and volition of the judgment debtor, be done by the decree-holder.

Obviously, the decree-holder cannot vacate the premises in place of the judgment-debtor and deliver its possession to himself and recover its costs. Reference may also be made to the distinction in the language of sub-rule (3) of Rule 35 and of sub-rule (5) of Rule 32; while in the former, the possession is to be delivered through its officers, in the latter the act is to be done by the decree-holder or by (and not through) another person. Consequently, obedience of the injunction to vacate cannot be done by any officer or other person appointed by the Court as well.

(7) As such, the conclusion is inevitable that sub-rule (5) of Rule 32 can, in the nature of things, not come to the aid of the decree-holder to obtain dispossession of the judgment-debtor and it would be impossible to covert a suit and a decree for injunction into a suit and decree for recovery of possession and afford consequential relief in the execution department."

17. Therefore, it was decided that resort cannot be had to Rule 32 of Order 21 of the CPC to deliver possession when decree is for injunction. Since the mode of execution for decree for permanent injunction is specifically provided for in Order 21, Rule 32, no resort can be had to the inherent powers of the Court. The observations of the Supreme Court in *Arjun Singh Vs. Mohindra Kumar and Others*, , which have been noticed by Full Bench, thus, shows that where there are specific dealing with particular topic either expressly or by necessary implication, they exclude the exercise of inherent powers of the Court. Thus, from the above judgment, it is clear that while executing the decree of a permanent injunction, the only mode available for the execution is Order 21, Rule 32 of the Code of Civil Procedure. However, in *Mst. Hajra Vs. Abdul Majeed Matoo and Others*, , *Sarup Singh Vs. Daryodhan Singh*, , Full Bench was dissented. In paragraphs No. 6, 8, 11 and 14, the following observations appear:

"A decree for injunction of any kind cannot be executed in any other manner than provided u/s 51 read with Order 21, Rule 32. Therefore, a decree for mandatory injunction directing the judgment debtor to vacate the property and for permanent injunction restraining him from causing any interference with the possession of the decree holder with respect to the suit property can be executed only in the manner provided under Order 21, Rule 32 and not under Order 21,

Rule 35 or Rule 36 which relate to execution of decrees for possession. If the decree holder satisfies the Court that the judgment debtor has had an opportunity of obeying the decree but has wilfully failed to obey it, the decree can be executed under Order 21, Rule 32(1) by detention of the judgment debtor in civil prison or by attachment of his property or by both and in lieu of or in addition to the above the Court under Order 21, Rule 32(5) can direct the decree holder or some other person to enforce compliance of the decree at the costs of the judgment debtor. That means that even if the judgment debtor is in possession, which possession he has to vacate under the decree, he can be compelled to vacate the property under Order 21, Rule 32(5). The Court will give the decree holder all possible assistance to occupy possession if it is practicable for the decree holder to do so. That would inevitably mean that the judgment debtor could be thrown out of the property from which he is directed to be evicted, by force. It is not correct to say that the decree for mandatory injunction cannot be executed under Order 21, Rule 32(5) merely because the judgment debtor is in possession and without evicting the judgment debtor the decree cannot be satisfied and therefore, the decree holder must bring a fresh suit for possession. Thus when the decree holder applies for delivery of possession in execution of the decree for mandatory injunction directing the judgment debtor to vacate the property the executing Court should proceed strictly in accordance with Order 21, Rule 32 and put the decree holder in possession of the property by getting the property vacated by the judgment debtor in the manner prescribed under Order 21, Rule 32(1) and (5). The pendency of any suit for cancellation of the decree and the temporary injunction against the decree holder directing him to maintain status quo will not stand in the way of the executing Court to execute the decree."

It has been observed in *Chothy Theyyathan Vs. John Thomas and Others*, in paragraphs No. 2, 3, 5 and 6 that though generally a decree for prohibitory injunction restrains a person from doing something and in that sense it could be said to be personal, it cannot always be considered to operate merely against a person. In a case where the decree restrains a judgment debtor from doing something in his own land to the detriment of the decree holder or in derogation of a right claimed by the judgment debtor to enjoy his own property as an owner, the decree could not be understood as merely personal and not binding on the representative or assignee of the judgment debtor in relation to the property in respect of which it is obtained. Where the decree is one restraining the owner of the property from blasting rocks in his property on a finding that such blasting would injuriously affect the adjacent owner of the property, the decree holder. When once a decree is passed it is obvious that the defendant in the suit, judgment debtor would be precluded from carrying on blasting operations in his property. To say that when he is succeeded by others, they would not be bound by the restraint relating to the enjoyment of the particular property is to derogate from the principle of public policy that there shall be no second litigation in respect of the same right and the same property. To uphold a

contention that the assignee from the judgment debtor can with impunity go about blasting rocks from the decree property against the terms of the decree would, jettison the very concept of finality of litigations, the concept of the merger of the cause of action in the decree and the principle of lis pendence, all principles of public policy. It cannot be the policy of law that every time an assignment of the decree schedule property takes place, the decree-holder should institute a fresh suit against the assignee so as to prevent him from disobeying the decree obtained by the decree holder against the original owner of the property. Call it the principle of lis pendence or call it by any other name, the policy of our law is that normally an assignee or a legal representative is bound by the decree obtained against the assignor or the predecessor-in-interest. This is the policy underlining our procedure and it is recognised by section 146, Order 21, Rule 16 and the Explanation to that Rule, section 11 and section 50 of the CPC and section 52 of the Transfers of Property Act. Even if an injunction cannot be considered to be a covenant running with the land, it could still be held on the scheme of the CPC and the principle of section 52 of the Transfer of Property Act that such a decree for injunction could be enforced against the legal representatives or assignees of the judgment debtor as provided in Order 21, Rule 32 of the Code of Civil Procedure.

18. What is pertinent to be noted from the above cases is that all the courts agree that Order 21, Rule 32 of the CPC is the only provision for the purposes of executing the decree of injunction. However, within that provision the attempts are being made to find out the way to the problem involved in the case. However, what is pertinent to be noted is that in the matter of Mst. Hajra Vs. Abdul Majeed Matoo and Others, , the decree was for mandatory injunction directing the judgment debtor to vacate that property and for permanent injunction restraining him from causing any interference with the possession of the decree holder with respect to the suit property. This shows that while the decree was passed, the possession was admittedly with the judgment debtor and the judgment debtor was directed to vacate the premises. This is, in fact, a decree for delivery of possession and thereafter for perpetual injunction. However, instead of directing him to deliver the possession to the judgment debtor, the mandate has been issued to vacate the premises and then on the basis of sub-rule (5) Rule 32, it has been interpreted that the Court can take every steps to do that act which the judgment debtor is directed to do either through plaintiff and/or through some agency. However, it appears that the decree for possession has been passed by way of a mandatory injunction and thereafter the provisions of Order 32, Rule 5 have been invoked for aid. I find that the decree as was for execution in that case is not for execution in the present matter. Present decree is only a prohibitory decree that the defendants are restrained from interfering the peaceful possession of the plaintiff and, therefore, looking to the facts of the present case and the decree under execution, the manner in which the execution has been suggested in Mst. Hajra Vs. Abdul Majeed Matoo and Others, is not acceptable. This case on the facts of the present case stands distinguished. The

second case is Chothy Theyyathan Vs. John Thomas and Others, . Here in this case the defendant was directed not to blast on his land so as to affect the land of the plaintiff and, therefore, from the decree itself it is clear that the decree was not only going with the person but it was going along with the land, because the mischief on the defendant's land was causing an injury to the plaintiff's land and, therefore, that decree of injunction was not a simpliciter decree of injunction but it was personal and coupled with the land and, therefore, the ratio from the implementation of such decree cannot be applied to the present facts of the case, so as to infer that the decree goes along with the land and, therefore, the possession warrant should be issued. This case is also not applicable to the facts of the present case. However, the principle accepted by all these cases is that the Order 21, Rule 32 of the CPC is the only provision for execution of the decree of an injunction. It is further revealed from the Supreme Court judgment Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, that the courts cannot invent any other mode of execution by taking recourse to section 151 of the CPC and, therefore, ultimately I find that the order directing to deliver possession is not a proper and legal order in the present execution petition. However, it is certain that the decree can be executed as against the purchaser/petitioners by taking recourse to the Order 21, Rule 32. But in view of discussion made above, the directions for the delivery of possession are required to be set aside. However, the executing Court can proceed with the execution of the said decree to the extent permissible under Order 21, Rule 32 of the Code of Civil Procedure.

19. The next question is about the challenge to the order of the Maharashtra Revenue Tribunal confirming the order of the Tahsildar directing the delivery of possession of the suit land in favour of the respondents. It may be stated that the Maharashtra Revenue Tribunal has considered the case thoroughly. It has been noticed that the initial rent note executed in 1960 is for the cultivation of the sugarcane crop. Not only that the said rent note is a registered one. On the basis of the said rent note, the entries of the original tenant have been effected in the record of rights since 1960 till the date of dispossession and, therefore, it is crystal clear that the original tenant Nababbi was a tenant of the said land as defined under the Bombay Tenancy and Agricultural Lands Act. The definition of the tenant in the said Act includes a person inducted in the land by lease. Thus, the findings recorded by all the revenue courts do show that the deceased Nababbi was the tenant of the suit land. However, she was dispossessed by the landlord or it can be said that the landlord obtained the possession of the suit land otherwise than the procedure provided under the Bombay Tenancy and Agricultural Lands Act. Section 29 of the said Act provides that whenever the landlord is entitled to get the possession of the land, he shall apply to the Tahsildar for the purposes of getting the possession. Not only that even if the tenant wanted to surrender the possession of the land, the provisions of section 15 of the said Act require that the said surrender should be verified before the Tahsildar and the Tahsildar shall be satisfied that it is voluntary surrender of the

tenancy. In that eventuality also, the landlord is not entitled to get the possession of the land, but the Tahsildar will have to hold an inquiry and the land will be returned to the landlord if the landlord satisfies the conditions as laid down in section 31 and section 31-A of the said Act and, therefore, whenever the landlord becomes entitled for possession of the land, it is for the authorities to scrutinize under the said Act as to whether the land should be returned to the landlord and if at all yes, to what extent. In the present matters, it is admitted position that the possession has been taken otherwise than the manner in which it is provided under the Bombay Tenancy and Agricultural Lands Act and thereby it is a dispossession. The tenants have rightly filed application u/s 29 for getting possession of the said land. On going through the proceedings with the help of the learned Counsel, nothing has been pointed out which can persuade this Court to upset the findings and orders recorded by the Revenue authorities in exercise of their powers under the Bombay Tenancy and Agricultural Lands Act. I find that the order of the Maharashtra Revenue Tribunal for delivery of possession is perfectly valid and just.

20. The last question which was raised, that the proceedings under the Bombay Tenancy and Agricultural Lands Act will point out that the tenant is not in possession of land and, therefore, the decree for injunction which has been passed is improper and, therefore, the execution petition cannot proceed. It is worthwhile to note that in a injunction matter, the plaintiff has to prove that the plaintiff is in possession of the land on the date of the suit and the possession is referable to a lawful title. And when the decree is passed in appeal it relates back to the date of institution of the suit and, therefore, the present decree of injunction which has been passed is perfectly a valid decree. It is further worthwhile to note that in view of the provisions of the Bombay Tenancy and Agricultural Lands Act, the relief of possession could not have been included in the civil suit in view of the specific provision and procedure provided u/s 29 and the bar of jurisdiction provided u/s 85. Even if such relief of possession would have been claimed in civil suit, there would have been reference u/s 85-A of the Tenancy Act and Civil Court would have to decide case in the light of findings of Tenancy Authorities. Had it been the matter in which the provisions of the Tenancy Act would not have involved, the relief for possession could have been included into civil suit in which case there would be reference u/s 85-A of the Tenancy Act and in that eventuality, the decree for possession and further a additional or consequential decree for injunction could have been passed by the Civil Court on the basis of likely apprehension of obstruction. Therefore, the decree for possession and the decree for injunction passed in one and the same suit is not a concept unknown to the civil law and, therefore, in the present matter, both the orders will have to be read so as to harmonize them together instead of rendering a decree of the Civil Court as ineffective because of the orders passed in Tenancy Court and, therefore, both the orders, namely the decree in civil suit and the orders of the Tenancy courts co-exist and are executable by the appropriate authorities. However, it is made clear that while

executing decree of a perpetual injunction, the Court shall see that the only procedure as has been provided under Order 21, Rule 32 of the CPC is followed and, therefore, from the impugned order of the executing Court only that portion which pertains to directing the Commissioner to deliver possession of the property is quashed and set aside. The rest of the execution proceedings to proceed in accordance with the law and the Tenancy Authorities may proceed to execute their orders in accordance with law. There is no substance in the Civil Revision Application so also in the writ petition. Both are hereby rejected. The plaintiff/respondent is entitled to prosecute both the remedies in accordance with law. Rule in both matters discharged. In the facts and circumstances of the case, no order as to costs.

21. Revision application & writ petition dismissed.