

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

CIVIL REVISION APPLICATION NO.68/2014

Mrs. Vijaya W/o Diwakar Patne and another

..Versus..

Kantilal s/o Kunwarjibhai Patel and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 9.2.2015

None appeared for the applicants in the morning session when the matter was called out. The matter was kept back. Again in the afternoon session, none appeared for the applicants when the matter is called out.

Heard Shri Anjan De, the learned advocate for the

non-applicant no.1.

The civil revision application is filed by the original defendants 1 and 2 challenging the order passed by the trial Court rejecting the application (Exh.35) filed by the original defendant no.2 under Section 9 read with Section 151 of the Civil Procedure Code.

The non-applicant/plaintiff has filed the civil suit praying for decree for recovery of the amount of occupation charges of the suit property. According to the original defendant no.2 the leave and license agreement was effective from 30th July, 2003 till 30th June, 2004 and is not subsisting from 1st July, 2004. According to the defendant no.2 an agreement has been entered into between the defendant no.1 and her husband with the non-applicant no.1 - plaintiff for purchasing the suit property for Rs.12,00,000/- out of which an amount of Rs. 75,000/- was paid by the defendant no.2 and her husband at the time of the agreement and Rs.3,25,000/- are paid subsequently by cheque

bearing no.163986. The applicants contended in the application that they are in occupation of the suit property pursuant to the agreement of sale and, therefore, the civil suit filed by the non-applicant no.1 - plaintiff for recovery of the amount of occupation charges is not maintainable. The learned trial judge has considered the contentions of the respective parties and has recorded that the defendants 1, 2 and 3 are not parties to the agreement of sale but they are parties to the leave and license agreement and in order to prove their respective contentions the parties will have to adduce evidence and the points raised by the parties can be adjudicated after trial. The learned trial Judge, accordingly, has rejected the application.

I do not find any reason to interfere with the impugned order inasmuch as the learned trial Judge has not committed any irregularity or illegality and has not transgressed the limits of his jurisdiction which necessitates the invoking of jurisdiction under Section 115 of the Code of Civil Procedure.

The civil revision application is dismissed with costs quantified at Rs.2,000/- (Rs. Two Thousand Only) to be paid by the applicants to the non-applicant no.1. The amount of costs shall be paid and the receipt should be produced on the record of the civil suit within one month failing which the learned trial Judge shall pass appropriate orders in the matter.

JUDGE

Tambaskar.