

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

WRIT PETITION NO.4048 OF 2019

(PARMATMA EK LAND DEVELOPERSVS.. VISHWANATH BALA NANDURKAR & OTH.)

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

Court's or Judge's orders

Dr R.S.Sundaram, Advocate for Petitioner.
Shri S.S.Sitani, Advocate for Respondent Nos. 4 & 5.

CORAM : Z.A.HAQ, J.

DATED : JULY 12, 2019.

Heard.

The petitioner has filed civil suit praying for decree for specific performance of the agreement dated 27th September 2004. In this civil suit, the petitioner/ plaintiff had filed application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure praying for temporary injunction restraining the defendant Nos. 1 to 5 from disturbing possession of the plaintiff over the suit land.

According to the plaintiff, he was put in possession of the suit land at the time of execution of the agreement dated 9th July 2004. The petitioner/ plaintiff contends that there had been subsequent agreement by which time to execute sale-deed in favour of the plaintiff was extended by the defendant Nos.1 to 3 and after 9th July 2004, the plaintiff had paid an amount of Rs.14,00,000/- to the defendant Nos. 1, 2 and 3. The defendants are opposing the claim of the plaintiff on all counts. The receipt of the amount of Rs.14,00,000/- by defendant Nos.1 to 3 is also denied by them. The learned advocate for the respondent Nos. 4 and 5

has pointed out the notice dated 26th May, 2008 issued on behalf of the respondent Nos.1 to 3 to the present petitioner. In this notice, the respondent Nos.1 to 3 had specifically stated that the plaintiff had agreed to pay Rs.6,00,000/- by cheque on 28th September 2004, however, he failed to pay the amount and therefore, agreement dated 28th September 2004 stood cancelled. The civil suit is filed in October 2016. According to the plaintiff, dispute was going on between defendant Nos. 1 to 3, and nephew had filed civil suit in 2003 against the defendant Nos. 1 to 3 claiming his share in the suit property and therefore, it was agreed that the sale-deed would be executed after the dispute got settled.

After going through the orders passed by the subordinate Courts, I find that the Courts have not granted temporary injunction in favour of the petitioner/ plaintiff as the plaintiff has not been able to satisfy that it is in possession of the suit land. After going through the material placed on record of the petition, I find that the conclusions of the subordinate Courts are based on proper appreciation of the material on record. It cannot be said that the subordinate Courts have committed any illegality or perversity while appreciating the material on record. Hence, I see no reason to interfere with the impugned orders.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE