

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

WRIT PETITION NO. 6378/2019

Sanjay s/o Shriramji Pendharkar,
aged 50 years, Occ. Business,
r/o Plot No. 37, East Wadhaman Nagar,
Nagpur.

.....**PETITIONER**

...VERSUS...

1. Smt. Sumitradevi wd/o Bajrangilal
Agrawal, aged 63 years, Occ. Business,
2. Shri Anand s/o Bajrangilal Agrawal,
aged 35 years, Occ. Business,
Both r/o Flat No. 203, Radhakrishna
Apartment, Wardhaman Nagar, Nagpur.
3. Sau. Rajshree w/o Sapan Jhunjhunwala,
aged 43 years, Occ. Housewife,
r/o Anand Nagar, Near Pimprala
Railway Gate, Jalgaon, Maharashtra
4. Sau. Rita w/o Kapil Agrawal,
aged 42 years, Occ. Housewife,

r/o 99/1, Riviera Town,
Near Manit Square, Bhopal (MP)

...**RESPONDENTS**

Mr. N. G. Jetha, Advocate for petitioner.
Mr. S. S. Sitani, Advocate for respondents.

CORAM:- V. M. DESHPANDE, J.
DATED :- 28.01.2021

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. The present petition is filed by original defendant against whom suit for specific performance of contract and for possession of the suit property was filed in the Court of learned Civil Judge Senior Division, Nagpur. The suit was registered as Special Civil Suit No.70/2017. Present respondents are original plaintiffs. Along with plaint, an application under Order XXXIX Rules 1 and 2 was also filed by the plaintiffs claiming the restraint order against the defendant-present petitioner from creating any third party interest over the suit property.

3. On being summoned, petitioner appeared and participated in the suit proceedings and filed written statement and also reply to the application for temporary injunction. Learned 17th Jt. Civil Judge Senior Division, Nagpur, vide order dated 15.04.2017, was pleased to reject the application filed on behalf of the respondents-original plaintiffs.

4. Felt aggrieved thereby, the respondents-plaintiffs approached the appellate Court by filing Misc. Civil Appeal No. 116/2017. The appeal was heard on its own merit by learned District Judge-12, Nagpur and by judgment dated 06.08.2019, it was directed by appellate Court that during the pendency of the suit, the defendant-petitioner shall not create any third party interest. Hence, this writ petition.

5. A submission is made on behalf of the petitioner that while deciding the application for temporary injunction, the learned lower appellate Court has made various observations touching to the merits of the suit, which is impermissible.

6. With the assistance of both the learned counsel, I have gone through the impugned judgment. I see some force in the submissions made by Mr. Metha, learned counsel for petitioner.

7. The learned lower appellate Court, in my view, has rightly passed the order that during the pendency of the suit, the petitioner would not create any third party interest, to that extent, the order passed by learned lower appellate Court is right.

However, while deciding the application for temporary injunction, it was the duty of the trial Court not to observe anything on merit of the matter since it may cause prejudice to the plaintiffs as well as defendant since the suit is still pending on the file of the Court below and parties have yet to open their respective cases.

8. In view of that, the writ petition is disposed of with following observations.

The order passed by District Judge-12, Nagpur in Misc. Civil Appeal No.166/2017 dated 06.08.2019 directing the petitioner-original defendant not to create any third party interest and not to transfer the suit property during the pendency of the suit is hereby maintained.

Special Civil Suit No.70/2017 pending on the file of Joint Civil Judge Senior Division, Nagpur is hereby expedited. The learned Judge shall decide the said suit on its own merit by giving opportunity of sufficient hearing to both; plaintiffs and defendant, within a period of 1 ½ years from the date of receipt of this order. While deciding the suit on its own merit, the learned trial Judge shall not get influenced by any of the observations

made by District Judge-12, Nagpur while deciding Misc. Civil Appeal No.166/2017.

The writ petition is disposed of. Rule is accordingly.
No order as to costs.

JUDGE

kahale