

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

WRIT PETITION NO.1026 OF 2019

<u>PETITIONER</u> <u>(Orig. Defendant</u> <u>No.2)</u>	:		Pralhad S/o Laxmanrao Wase, Aged about 80 years, Occu: Retired, R/o NIT Qtr. No. C/42, Kapil Nagar, Nari Road, Nagpur.
			<u>VERSUS</u>
<u>RESPONDENTS</u> <u>(Orig. Plaintiff</u> <u>No.1)</u>	:	1.	Sanjay S/o Haridas Meshram, Aged about 45 years, Occu : Private, R/o Bhagihari Vila, Awale Chowk, Lashkaribag, Nagpur.
<u>(Orig. Plaintiff</u> <u>No.2)</u>	:	2.	Anilkumar S/o Anand Fating, Aged about 43 years, Occu : Advocate, R/o New Shukrawari Road, Gadikhana, Gandhigate, Mahal, Nagpur.
<u>(The petition is</u> <u>dismissed in</u> <u>default against</u> <u>Respondent No.3</u> <u>vide order dated</u> <u>11.10.2019)</u>	:	3.	Tambrapal S/o Pralhad Wase, Aged about 47 years, Occu : Business, R/o Tejbahadur Nagar, Nari Road, Nagpur.

 Shri. T. S. Deshpande, Advocate for Petitioner.

<u>CORAM</u>	:	<u>N. B. SURYAWANSHI, J.</u>
<u>DATE</u>	:	<u>08.10.2021.</u>

ORAL JUDGMENT

RULE. Rule made returnable forthwith.

Heard finally with the consent of the parties.

2. This petition takes exception to the order dated 01.10.2018 (Annexure-E) passed by the 12th Joint Civil Judge Senior Division and Additional Chief Judicial Magistrate, Nagpur below Exh-43, thereby allowing the Application and permitting the deletion of Plaintiff No.2 from the cause title of the suit.

3. The Respondent Nos.1 and 2/original Plaintiff Nos.1 and 2, filed Special Civil Suit No.614 of 2009 against present Petitioner/original Defendant No.2 and Defendant No.1, seeking relief of decree of possession of a room admeasuring 200 sq.ft. covered by roof of tin in Ward No.57, Khasra No.59/1 on the layout of Ekta Flat Cooperative Housing Society, Nagpur, half portion of Plot No.6 on the North portion (suit property) against the Defendant No.1/Tambrapal. The original Defendant No.2/Petitioner by filing written statement resisted the suit. A counter claim is also raised seeking recovery of Rs.4,32,500/- from the

Plaintiffs/Respondent Nos.1 and 2, as a balance consideration amount of sale deeds No.128 and 130 dated 13.01.2009 alongwith interest @ 20% p.a. w.e.f. 28.04.2009 till its realization. A declaration is sought that both the sale deeds have been executed by the Plaintiffs with common intention to defraud and deceive the Defendant No.2/Petitioner without paying balance consideration amount of Rs.4,32,500/- and the same are nullity and void and not binding on Defendant No.2.

4. The Plaintiff No.1 filed an Application (Exh-43) contending that he has purchased half portion of the suit property from Plaintiff No.2 and the Plaintiff No.2 is no more concerned with the suit property and his name is required to be deleted from the array of the Plaintiffs. Only Plaintiff No.1 is related with the case and he will contest the proceedings.

5. The Defendant No.2/Petitioner objected the said Application submitting that the Plaintiff No.1 has no right to claim deletion of the name of Plaintiff No.2. Nothing is placed on record to show that he has purchased the suit property from Plaintiff No.2. He therefore prayed for rejection of the said Application. The Trial Court allowed the Application and permitted Plaintiff No.1 to carry out amendment within 14 days from the date of order. This order is impugned in the present petition.

6. Heard the learned Advocate for Petitioner. None appears for the Respondent Nos.1 and 2, though they are duly served.

7. The learned Advocate for Petitioner submits that the impugned order is unsustainable in law and facts of the case. There is no provision in Code of Civil Procedure, which permits the Court to delete the name of Plaintiff at the instance of other Plaintiffs. He further submits that by the

deletion of Plaintiff No.2, he will be prejudiced while contesting his counter claim.

8. Rule 1 sub-rule (5) provides that :

“At any time after the institution of a suit, the plaintiff may as against or any of the defendants abandon his suit or abandon a part of his claim :

5. Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff.”

This provision therefore provides for abandonment of suit by the Plaintiffs, who intends to withdraw from the suit.

9. In the case in hand, the Application seeking deletion of Plaintiff No.2 was not filed by Plaintiff No.2, but it was filed by Plaintiff No.1. This fact is recorded in the order passed by the Trial Court. Nothing was placed on record to show that the Plaintiff No.1 has purchased the suit property from Plaintiff No.2. In that view of the

matter, the Trial Court was not justified in passing the impugned order. The Impugned order is therefore unsustainable and is liable to be quashed and set aside. Hence, the following order:

ORDER

i) Writ Petition No.1026 of 2019 is **allowed.**

ii) The impugned order dated 01.10.2018 (Annexure-E) passed by the learned 12th Joint Civil Judge Senior Division and Additional Chief Judicial Magistrate, Nagpur below Exh-43, is hereby quashed and set aside.

Rule is made absolute in the above terms with no order as to costs.

(N. B. SURYAWANSHI, J.)