

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

WRIT PETITION NO.1419 OF 2022

(M/s. S. N. Housing and Land Developers, Nagpur thr. its Partner Smt. Sanjivani
Prashant Sahare and others Vs. Tapan s/o Rameshkumar Jaiswal)

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

Court's or Judge's orders.

Mr. M. B. Naidu, Advocate for Petitioner.

CORAM: ROHIT B. DEO, J.

DATE: 16th MARCH, 2022.

The petitioners are the original defendants in Special Civil Suit 65/2018 which is instituted by the plaintiff seeking decree of specific performance of contract and permanent injunction.

2. The defendants are aggrieved by the order dated 10.08.2021 whereby the learned trial Judge has allowed the application preferred by the plaintiff under Order 6 Rule 17 of the Civil Procedure Code (Code).

3. It would be necessary to note that the suit seeks specific performance of the agreement dated 29.04.2016.

4. The application under Order 6 Rule 17 of the Code is preferred, before the commencement of the trial, on the premise that the description of the suit property needs correction.

5. The defendants contended, and the learned counsel Mr. M. B. Naidu reiterates the submission which did not find favour with the learned trial Judge, that certain additional land is sought to be included by the proposed amendment, and therefore, since claim for specific performance qua the newly added land is rendered time barred, the amendment could not have been allowed. The submission proceeds on the premise that certain properties are newly added. However, contrary to the submission of Mr. Naidu, what I find is that all that is done is to correct the description of the property which is covered by the agreement. Ultimately, after the evidence is adduced, the decree of specific performance, if such a case is made out, cannot travel beyond the agreement. If a particular plot is not covered by the subject agreement of which the specific performance is sought, the claim to that extent shall be dismissed. It would be premature, at least at this stage, to assume that what is sought by the plaintiff is the inclusion of certain property which is not the subject matter of the agreement of which specific performance is sought.

6. In view of what is observed *supra*, the submission of Mr. Naidu on the basis of the law of limitation, need not detain me. As a fact, the submission is not only speculative, the submission may turn out to be of no relevance. If Mr. Naidu is right in the contention that land which is not covered by the agreement dated 29.04.2016 is included, the suit to that extent will have to be dismissed on merit and the question of limitation etc. would not arise. Similarly, the

question of limitation will also not arise if the land which is included is already the subject matter of the agreement of which specific performance is sought and all that the plaintiff has done is to correct the description. Either way, the submission that limitation would be an issue, needs no further scrutiny.

7. The petition is dismissed.

JUDGE

NSN