

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

WRIT PETITION NO.4837 OF 2019

M/s. Shri Anusya Infrastructures,
through its Partner,
Smt. Jaimala w/o Dilip Kumbhare,
Aged about 44 years,
Occ. Business, R/o. Plot No. 58-B,
Hanuman Housing Society,
Vaishali Nagar, Nagpur-17. **PETITIONER**

...V E R S U S...

1. Shri Shrawan s/o Rajaramji Paunikar,
Aged about 68 years, Occ. Retired,
R/o. Park View Apartment,
Kasturchand Park, Nagpur.
2. Shri Bhaskar s/o Rajaramji Paunikar,
Age 59 years, Occ. Private,
R/o Ward No. 2, Khaparkheda,
Tah. Saoner, Dist. Nagpur.
3. Shri Dharma Construction and Housing
Finance Private Ltd., through its
Managing Director,
Shri Dharmdas s/o Melumal Ramani,
Age about 48 years, Occ. Business,
R/o. Plot No-12,
Gopal Nagar, Nagpur. **RESPONDENTS**

Mrs. Smita V. Taksande, Advocate for Petitioner.
Mr. B. J. Anthony, Advocate for Respondent 1.

CORAM: **ROHIT B. DEO, J.**
DATE: **13th JANUARY, 2022.**

ORAL JUDGMENT:

Heard Mrs. Smita V. Taksande, the learned counsel for the petitioner and Mr. B. J. Anthony, the learned counsel for respondent 1.

2. The petitioner is the original plaintiff in Special Civil Suit 13/2014 which is instituted seeking decree of specific performance of contract and cancellation of sale-deed.

3. The defendant contends that contrary to the agreement between the plaintiff and defendant 1, the suit property was sold to defendant 3. It is in this back-drop, that the plaintiff is claiming specific performance and the relief of cancellation of sale-deed between defendants 1 and 2 on one part and the defendant 3 on the other.

4. During the pendency of the suit the defendants 1 and 2 preferred application (Exh.53) seeking impounding of the agreement to sell dated 19.03.2010 filed by the plaintiff on record. The learned trial Judge reasoned that since the consideration shown in the agreement is Rs.92,80,000/- (Rupees Ninety Two Lakhs Eighty Thousand), the stamp duty of Rs.100/- (Rupees

Hundred) is insufficient and the document is liable to be impounded. The learned Judge records that the learned counsel for the defendants 1 and 2 pointed out the provisions of clause 5(h)(A)(iii) of Schedule-I of the Maharashtra Stamp Act.

5. In all fairness to the learned counsel for the defendants 1 and 2, he is not disputing the submission of the learned counsel for the petitioner that the provisions to which a reference is made by the learned Judge has no application whatsoever.

6. The question which really arises is whether the agreement of sale delivers possession and therefore, ought to have been stamped as if the same is a conveyance.

7. It is admitted that it is the defendant 3 who is in possession of the property, by virtue of sale-deed executed by defendants 1 and 2. The agreement does not throw any clear light on possession since all that is referred to is certain permission in the nature of licence/s to do certain things like carving out layout etc.

8. The learned counsel for the petitioner has rightly placed reliance on the decision of the Apex Court in ***Z. Engineers Construction Private Limited and another v. Bipin Bihari Behera and others (2020) 4 SCC 358*** to buttress the submission that the factum of possession is a matter of evidence, and therefore, the learned trial Judge committed a grave error in directing impounding of the document.

9. The order impugned is unsustainable and is set aside.

10. The sufficiency or otherwise of the stamp shall be decided after the evidence is complete. The objection of the defendants 1 and 2 to the admissibility is left open.

11. The petition is allowed in the aforestated terms.

12. The trial court shall expedite the suit.

JUDGE

NSN