

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

Writ Petition No.1881/2023

(Life Style Green City Pvt. Ltd. and others V Pyarelal (dead) thr Lrs and others)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. S.S. Sitani, Advocate for petitioners.

CORAM : AVINASH G GHAROTE, J.

DATE : 24-03-2023

Heard learned Counsel for the petitioners.

2. This is the petition by the original defendant. The petition challenges the order below Exh-5 dated 07-02-18 passed by the learned trial Court, holding that the respondent/plaintiff is in possession of the land of Kh. No. 65, adm 0.73 HR and Kh. No.66, adm. 0.70 HR total 1.43 HR situated at Mouza Tidangi, Tah. Kalmeshwar, Dist-Nagpur and restraining the petitioner/defendant from disturbing the possession of the plaintiff/respondent over the suit property till the disposal of the suit, and so also the judgment of the appellate Court dated 09-03-23, dismissing the appeal confirming the finding and order rendered by the trial Court.

3. Mr Sitani, learned Counsel for the petitioners, contends that both the Courts below do not

take into consideration that the electricity bill for the construction on the suit land is being paid by the petitioners, and so also the Talathi report dated 15-10-2017 and therefore has incorrectly arrived at the finding. It is also contended that the learned appellate Court has not considered the spot panchanama given by the Gram Adhikari, Kalmeshwar (pg 222), which according to him shows the petitioners to be in possession and also the fact that after the sale deed the petitioners have constructed a swimming pool upon the aforesaid lands.

4. It is also not disputed that on account of the balance consideration of Rs.6,52,000/- a cheque bearing no. 534489 dated 20-7-2016 drawn on ING Vyasya Bank Ltd, Nagpur was handed over to the petitioner no. 1.

5. The contention is that the cheque dated 20-7-16 for Rs. 6,52,000/- was taken back on the pretext of replacement, and also the possession of the property in question not delivered by the petitioners to the respondent. It is also contended that the original title deed is still with the petitioner no.1. Based upon these submissions, it is contended that the concurrent findings rendered by the Courts below, are required to be quashed and set aside and it be held that the

petitioner no.1 is in continuous possession of the lands in question and Exh-5 be rejected.

6. It is not in dispute, that the respondent no.1 was the owner of the aforesaid lands. The execution and registration of the sale deed dated 20-4-2015 by the petitioner no.1 through the petitioner no. 2 who is the Director of petitioner no.1 in favour of respondent (pg 87) is also not disputed. He also not dispute that under the sale deed, the amount of Rs. 2 lacs was received by petitioner no.1. In sum and substance, the entire execution and registration of the Sale Deed dated 20-4-15 is not disputed by the petitioners.

7. The petitioner no.1 has also filed a suit which is bearing Spl.C.S. No.811/17 for cancellation of the sale deed dated 20-4-15, which is pending.

8. The contention that the electricity bills, for the construction made upon the suit property have been paid by the petitioners, in my considered opinion, cannot be a singular factor to hold that the petitioner is in possession. The electricity department, is notorious for not changing the holdings of the meter in the name of the transferee, which continues for years together and this factor by itself cannot have the effect of demonstrating that the petitioners are in possession.

The report of the Talathi which is sought to be relied upon does not indicate on what basis it was given and therefore clearly lacks credibility.

9. Though it is contended that the amount Rs.6,52,000/- has not been received by the petitioner no.1, it is not disputed that a sum of Rs. 6,52,000/- has been credited in the account of the petitioner no.2 by RTGS on 24-8-17. Since the execution and registration of the sale deed itself has not been disputed by the petitioners, it naturally follows that the averments made in the sale deed stands admitted. In the light of this position, though the sale deed is dated 20-4-15 and the cheque was dated 20-7-16, which is claimed to have been taken back under the pretext of issuing a new one, there is no objection or communication in this regard by the petitioner no.1 to the respondent during this entire period from 20-4-2015 till 20-7-2016 which is a substantive period of time, which would indicate that the plea raised, that the said cheque hand over at the time of sale deed was taken back is clearly unsubstantiated. It would therefore be apparent that in absence of any objection in this regard has to be held that the cheque was received by the petitioner no.1 at the time of execution and registration of the sale deed. Once the vendor received a cheque for the balance consideration, the responsibility of putting it for encasement is that of the vendor and not of the

purchaser. That apart, the terms of the sale deed do not indicate that the title could stand transferred upon encashment of cheque. On the contrary the terms of the sale deed indicates immediate transfer of title. There is also categorical term in the sale deed in respect of respondent being placed in actual and physical possession of the property in question on the date of the sale deed itself. The sale deed being a duly registered instrument has a presumptive value in law. In order to rebut this presumption, strong material has to be placed on record by the petitioner/ vendor. In the instant case, except for the electricity bill and the Talathi certificate, as discussed above, there is no other material on record. Though, Mr Sitani, learned Counsel for the petitioners, has sought to place reliance upon a spot panchanama, dated 8-2-18 (pg 222) on record to contend that even after the sale deed dated 20-4-15, it is the petitioners who have constructed a swimming pool on the suit property, the application under Order 41 Rule 27 of the Code of Civil Procedure, for placing the panchanama on record has been rejected by the appellate Court and therefore this cannot be a document which can be taken into consideration at this stage. That apart, the construction of swimming pool would naturally require a contract to be made in between the petitioner and the expert agency for erection of the same. Such a document is also not placed on record, in view of which this contention also cannot be accepted.

10. The learned trial Court in the order dated 07-02-18 has considered the terms of the sale deed and also the electricity bills and the certificate issued by the Talathi, and in my considered opinion, has rightly arrived at a finding of the possession is being delivered under the terms of the sale deed dated 20-4-15 to the respondent.

11. The appellate Court has also rightly observed that the plea raised by the petitioners, that the cheque of Rs 6,52,000/- was paid along with the sale deed, but was taken away thereafter under the pretext of changing the same in some other instrument is also unbelievable, in absence of any communication in that regard by the petitioners. It is inconceivable that in case the cheque for the balance consideration of Rs.6,52,000/- was taken away by the respondent under the pretext of changing it with some other instrument, the petitioners, would have kept quiet and not taking any action against the respondent in that regard. This would clearly indicate that the plea of the cheque not being given for the balance consideration to the petitioners along with the sale deed is clearly unworthy of credence.

12. Considering the above position, I therefore do not see any reason to interfere in the order below Exh-5 passed by the trial Court as well as the judgment

of the appellate Court. The petition is therefore without any merit. Hence, the same is dismissed. No costs.

JUDGE

Deshmukh