

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

FIRST APPEAL NO.989 OF 2022

(N.K.S. Mining Ltd. Vs. Dr. Satish s/o Vasant Rao Chiddarwar and ors.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.V. Sohoni, Advocate for the appellant.
Shri D.G. Kulkarni, Advocate for respondent Nos.1 and 2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- MARCH 17, 2023.

Heard.

2. Present appeal is preferred by the appellant who is the original defendant No.1 – N.K.S. Mining Limited against the judgment and order passed in special suit No.567/2015.

3. The suit was filed by respondent Nos.1 and 2 for declaration, possession, permanent injunction and cancellation of sale-deed.

4. As per the facts of the case, the plaintiffs who filed the suit for declaration on the contention that they have purchased the suit property agricultural land bearing Survey No.88/1 of village Kanholi, Tahsil Hingna, District Nagpur P.S.K. No.48 ad-measuring 4.71 HR out of 2.03 HR from its original owner. The sale-deed of the suit property was executed by defendant Nos.1 and 2 in their favour. Thus, out of 4.71 HR from Survey No.88/1, the said defendants have already sold the 3.65 HR land to the plaintiff and defendant Nos.4 and 5 are aware about the same. The said defendant Nos.1 has sold the land ad-

measuring 3.09 HR to defendant No.3 by way of sale-deed dated 04/01/2010. The said issue was adjudicated by the Civil Judge, Senior Division, Nagpur and declaration was granted in favour of the plaintiffs that they are the owners of the suit property.

5. Being aggrieved and dissatisfied with the same, present appeal is preferred. During the pendency of the appeal, respondent Nos.1 and 2 filed a Pursis for setting aside the judgment and decree dated 09/08/2017 and requested to remand the matter back to the trial Court with direction to dispose of it within 6 months from the date of appearance for which they have been compensated as indicated in the order on application for condonation of delay.

6. Shri Soni, learned Counsel for the appellant is present and has no objection for the same.

7. In view of the reasons mentioned in the Pursis and considering that dispute can be resolved at the trial Court itself, if proper opportunity is granted to the appellant to contest the suit. It is apparent that the appellant has not availed the opportunity before the trial Court as it was proceeded *ex-parte* against the appellant before the trial Court.

8. In the light of the above facts and circumstances, the judgment and decree passed by the Civil Judge, Senior Division, Nagpur is quashed and set aside and the Special Civil Suit No.567/2015 is remanded back to the 13th Joint Civil Judge, Senior Division, Nagpur

with direction that the suit be disposed of within six months from the date of appearance of the parties before it.

9. The parties shall appear before the Civil Judge, Senior Division, Nagpur on 05/04/2023. The parties to co-operate with the Civil Judge, Senior Division, Nagpur to dispose of the suit within six months. The appellant shall file written statement without fail within three weeks after the appearance before the Lower Court.

10. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*