



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 4521 OF 2022

Smt. Tabassum Khan W/o Javed Rana,
Aged about 42 years, Occ. Household
R/o Adarsh Colony, Mansha Chowk, Jafar
Nagar, Nagpur 440 013

...Petitioner

// VERSUS //

1 Zahid Iqbal S/o Javed Iqbal, proprietor of M/s
Max Point Construction and Land Developer,
aged about 32 years, Occ. Business &
Agriculture, R/o in front of NMC Octroi Post
No.2, Kamptee Road, Nagpur

... Intervener

2 Smt. Razia Baig Wd/o Hafiz Baig (since
deceased)

3 Shakil Baig S/o Late Hafiz Baig, Aged about 52
years, Occ. Business
R/o Baig Complex, Teacher's Colony, Near
Ahmed Kirana, Jafar Nagar, Nagpur 440 013

4 Ashfaque Baig S/o Late Hafiz Baig,
Aged about 50 years, Occ. Business
R/o Near Residency School, Opp. Prakash
Hospital, Residency Road, Sadar, Nagpur

5 Altaf Baig S/o Late Hafiz Baig,
Aged about 40 years, Occ. Business
R/o Near Residency School, Opp. Prakash
Hospital, Residency Road, Sadar, Nagpur

6 Anjum Khan W/o Salim Khan, aged about 44
years, Occ. Household R/o 49, Kamgar Nagar,
near Police Line Takli, Nagpur

7 Raju Jyotiprasad Mishra,
Aged about 38 years, Occ. Business
R/o C/o Basera Infra Heights Pvt. Ltd., Ratan

Nagar, Opp. Mankapur Dahan Ghat, Koradi Road, Nagpur

- 8 Abid Khan S/o Shabbir Khan, Green City Builders, Aged about 39 years, Occ. Business, R/o Plot No.1, SBI Colony, Anantnagar, Nagpur-13
- 9 Goel Ganga Group, Glocal Square, Abhayankar Road, Sitabuldi, Variety Square, Nagpur 440 012 through its Manager
10. Richa Manoj Gupta, Aged adult, Occ. Business C/o Usha Beauty Parlour, Ganisons Building, Residency Road, Sadar, Nagpur
11. UCO Bank, Sitabuldi, Nagpur, through its Manager
12. ~~ICICI Bank, Central Bazar Road, Ramdaspeth, Nagpur~~ Deleted as per order dated 16.7.23
13. IDBI Bank, Rabindranath Tagore Marg, Gupta House, Civil Lines, Nagpur
14. "The Hitvada", through its managing director Shri Rajendra Puruhit, Near Rahate Colony Square, Pandit Jawaharlal Nehru Marg, ... Respondents Dhantoli, Nagpur-440 012.

Shri Masood Sharif Advocate for the petitioner.

Shri N.R.Bhishikar, Advocate for the respondent no. 1.

Shri M.S.Abbasi, Advocate for the respondent no.7.

Shri M.R.Joharapurkar, Advocate for the respondent no.12.

Shri S.S.Ghate, Advocate for the respondent no.14.

CORAM : ANIL S. KILOR, J.

DATED : 29th NOVEMBER, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. In this writ petition, the challenge is raised to the Order Below Exhibit 105 dated 6th July, 2022 passed by the 6th Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No. 65 of 2021, allowing the application moved by the respondent no.1 under Order 1 Rule 10 of the Code of Civil Procedure.

3. Shri Sharif, learned counsel for the petitioner points out that now the respondent no.1 has filed a Special Civil Suit No. 1251 of 2022 for cancellation of sale dated 19th July, 2019, declaration, partition, separate possession, permanent and perpetual injunction. It is therefore submitted that both the suits are pending before the same Court and both the matters can be tried together, hence, the order directing to add respondent no.1 as party to the Special Civil Suit No. 65 of 2021 filed by the petitioner for partition needs to be set aside.

4. On the other hand, Shri Bhisikar, learned counsel for the respondent no.1 submits that respondent no.1 has a right in the amount receivable from the share of respondent no.7 herein and therefore he is necessary party of the Special Suit No.65 of 2021.

5. It is further pointed out that the learned trial Court while passing the order below Exhibit 5 has observed that the defendant no.6 and 9 are permitted to make payments only in the joint account of plaintiff and defendant no.2 to 5. The plaintiff and defendant no. 2 to 5 are permitted to open a joint account in a nationalized bank and can receive the payment due and payable from defendant nos.6 and 9. It is

further observed that they shall not utilize the same for their exclusive use without prior permission of the Court. He, therefore, submits that this order would be adverse to the interest of the respondent no.1.

6. However, Shri Sharif, learned counsel for the petitioner submits that subsequently the learned trial Court vide order dated 17th January, 2023 modified the said order and it is observed that after the deposit of the amount it shall be kept in fixed deposit till further order.

7. Shri Bhisikar, learned counsel for the respondent then submits that if the respondent no.1 is not made a party to the said suit and in case any party to the said suit moves application for modification of above referred order dated 17th January, 2023 and the learned trial Court modifies the order and allows to withdraw the amount, he would be deprived of the relief he is entitled.

8. After considering the rival submissions made by both the parties, I am of the opinion that since the respondent no.1 has filed a separate suit i.e. Special Civil Suit No. 1251 of 2022 for cancellation of sale dated 19th July, 2019, declaration, partition, separate possession, permanent and perpetual injunction, the apprehension expressed by the respondent no.1 can be addressed by directing the trial Court not to allow any party to the special civil suit no. 65 of 2021 to withdraw the amount till the decision of both the suit i.e. Special Civil Suit No. 65 of 2021 and Special Civil Suit No. 1251 of 2022. Accordingly, I pass the following order.

- i. Writ Petition is allowed;
- ii. Order Below Exhibit 105 dated 6th July, 2022 passed by the 6th Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No. 65 of 2021 is hereby quashed and set aside.
- iii. The learned trial Court is directed not to allow to withdraw the amount kept in fixed deposit as per order dated 17th January, 2023 passed below Exhibit 120 and 124 in Special Civil Suit No. 65 of 2021 till the disposal of Special Civil Suit No. 65 of 2021 and Special Civil Suit No. 1251 of 2023.
- iv. Further liberty is granted to the respondent no.1 to move an application for clubbing of both the suits i.e. Special Civil Suit No. 65 of 2021 and Special Civil Suit No. 1251 of 2023 together. If such application is moved, the learned trial Court shall decide the same in accordance with law.
- v. The learned trial Court is directed to decide the both the suits at the earliest.

[ANIL S. KILOR, J.]