

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

APPEAL AGAINST ORDER NO.48/2022

Swabhumi Reality Infra and Developers through Sanjay Ramprasad Tayde
Vs.
Sanket Shriram Wagh

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

Court's or Judge's orders

Shri AA. Dhawas, Advocate for applicant
Shri Y.A. Kullarwar, Advocate for respondent

CORAM : SMT. M.S. JAWALKAR, J.

DATED : 04/01/2023

The present Appeal Against Order is filed being aggrieved by the order dated 22/12/2022 passed by the learned District Judge, Gadchiroli in Special Commercial Civil Suit No. 02/2022 below Exhibits 5 and 18 seeking temporary injunction restraining defendant or persons on his behalf from obstructing or interfering his possession over the suit property and also from dispossessing him.

2. It is contention of the plaintiff in the application that for commercial purpose, plaintiff agreed to purchase suit property from defendant and accordingly, on 30/03/2015, by accepting an advance of Rs.51,000/-, defendant executed a document styled as 'Token agreement of sale'. The time was not the essence of the contract and it was agreed that after the land was converted into Type-1, by following the due process of revenue authority, the plaintiff would pay remaining amount and defendant would execute agreement of sale in favour of plaintiff. The land was

converted into Type-1 from 09/10/2015. Thereafter, on 31/11/2015, one notarized document was executed styled as, "Consent letter-cum-authority letter" whereby authority was given to plaintiff to develop the suit property and also to execute agreement of sale by accepting consideration. It is claimed that considerable amount was paid by the plaintiff however, the defendant avoided to execute the document.

3. The defendant denied all the adverse contentions. As per defendant, the alleged token agreement of sale was executed on 30/03/2015, therefore, the suit should have been filed within three years thereafter. It is further contended that the portion of the land i.e. 7 plots have already been sold out by the defendant to third person and they have not been made party in the present proceedings. Moreover, description of the suit property is incorrect. As such, relief of injunction cannot be granted as possession was never handed over to the plaintiff and defendant himself undertook the development work. There is no *prima facie* case made out by the plaintiff for grant of such injunction.

4. The learned District Judge, after considering the rival contentions, rightly came to the conclusion that the issue involved needs evidence to be led. *Prima facie* except the consent letter there is nothing on record to show that the plaintiff is in possession of the suit property. The said authority letter is denied by

the defendant. It is also observed by the learned District Judge that the said authority letter also would not disclose current description of the property.

5. In view of the fact that already 7 plots were sold and possession is also handed over to said 7 persons, those persons are necessary parties. In view thereof, there is no case made out for grant of injunction by the plaintiff. As such, I do not see any reason to interfere with the order passed by the learned District Judge. Accordingly, appeal stands rejected.

6. At this juncture, learned Counsel for the appellant makes a request that further transfers, if any, be made subject to the decision of pending Special Commercial Civil Suit. I do not see any impediment in granting such a relief. Accordingly, the subsequent transactions will be subject to the decision of pending Special Commercial Civil Suits.

JUDGE

R.S. Sahare