



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

WRIT PETITION NO.894 OF 2024

Arun Sakharam Dubbewar .Vs. Laxmikant Bhagwanrao Wattamwar

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

Court's or Judge's Order

Shri V.N. Patre, Advocate for petitioner.

Shri B.G. Kulkarni, Advocate for respondent.

CORAM : ANIL S. KILOR, J.

DATED : 14/02/2024

1. Heard Shri Patre, the learned counsel for the petitioner and Shri Kulkarni, learned counsel for the respondent.

2. The order granting injunction by the first Appellate Court against the petitioner thereby, restraining the petitioner/defendant from changing the nature of the suit property and alienating the suit property to the third person vide order below Exh.16 dated 23.11.2023, is under challenge in this writ petition.

3. The respondent is the plaintiff who filed a suit for specific performance which was decreed to the extent of refund of amount vide judgment and decree dated 29.04.2022 passed by the 4th Jt. Civil Judge Jr. Div. Pusad, Dist. Yavatmal in R.C.S. No.49 of 2012.

4. The plaintiff feeling aggrieved by a denial of the decree for specific performance, approached to the first Appellate Court by filing Regular Civil Appeal No.15 of 2022. During the pendency of the appeal because the defendant started some construction, the application Exh.16 was moved by the respondent seeking injunction. The learned first Appellate Court after hearing both the parties allowed the said application vide order dated 23.11.2023. Hence this petition.

5. Shri Patre, learned counsel for the petitioner at the outset submits that, presently there is a decree of refund of amount and there is no decree of specific performance and therefore, the order not to change the nature of the suit property, is unwarranted.

6. It is submitted that, the house in which the defendant is residing is in dilapidated condition and therefore, he applied for sanction of a plan for construction and on sanction of it started the construction.

7. Shri Kulkarni, learned counsel for the respondents/plaintiff supports the impugned order and prays for dismissal of the present writ petition.

8. After going through the record, it is evident that, presently there is no decree of specific performance in favour of the plaintiff but the decree of refund of amount was granted. Furthermore, if the appellant/respondent succeeds in Regular Civil Appeal No.15 of 2022, the construction would not be the impediment in the execution of the sale deed in favour of the respondent in view of the statement made by the learned counsel for the petitioner that, the petitioner will not claim any equity on the ground that certain construction was made over the suit land.

9. In the circumstances, I am of the opinion that, the learned first Appellate Court has committed error in restraining the petitioner from carrying out the construction or for changing the nature of suit property.

10. As far as the second part of the impugned order which says that, the petitioner is restrained from alienating the suit property to the third person, is concerned, I do not find any fault with the same. Accordingly, I pass the following order :

- i) The writ petition is **partly allowed**.
- ii) The order below Exh.16 dated 23.11.2023 passed by the District Judge-1, Pusad, Dist.

Yavatmal in R.C.A. No.15 of 2022, is hereby quashed and set aside to the extent restraining the petitioner from carrying out the construction or changing the nature of the suit property.

- iii) Needless to mention here that the construction or modification or change of nature of the suit property would be at the risk of the petitioner.

Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE