



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

Writ Petition No. 5834 of 2023

[Mahendra S/o Hetram Pardhi ..vs.. Subhash S/o Namdev Agade and ors.]

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

Court's or Judge's orders

Mr. V. S. Mishra, Advocate for the petitioner
Mr. A. A. Vastani, Advocate for respondent nos. 1 to 6

CORAM : ANIL L. PANSARE J.

DATED : 19-09-2024

The challenge is to order dated 8-2-2023 passed below Exhibit 45 by the Joint Civil Judge Senior Division, Gondia rejecting the application filed by the petitioner – original plaintiff to injunct the respondents-original defendants from creating third party interest in the suit property.

2. Having heard both sides and having gone through the material placed before me, it transpires that similar such application filed by the petitioner was rejected by the trial Court vide order dated 4-12-2020. The said order was assailed before this Court in AO No. 3/2021 wherein this Court, by order dated 24-2-2021, upheld the order passed by the trial Court for the following reasons.

“3. *The appellant had filed the suit for specific performance on the ground that by virtue of agreement dated 10.08.2020, the respondent Nos. 1 and 2 had agreed to sell the suit property for sale consideration of Rs. 1 crore. It is the case of the appellant that respondent Nos. 1 and 2 had assured that respondent Nos. 3 to 5 who are also the co-owners would execute the sale-deed in his favour. The appellant claims to have paid Rs. 1 lakh as an*

earnest money. The grievance of the appellant is that the respondent Nos. 1 to 5 in breach of the contract executed the sale-deed on 10.11.2020 in favour of the respondent No. 6 and thereby sold the suit property to the respondent No. 6.

4. *The appellant filed an application for injunction on an apprehension that the respondent No. 6 would alienate or create third party interest in respect of the suit property.*

5. *The records prima facie reveal that the respondent Nos. 1 and 2 had by agreement for sale dated 10.08.2020 agreed to sell the entire property to the appellant. The respondent Nos. 1 and 2 were not the exclusive owners of the property. The respondent Nos. 3 to 5 who are also co-owners were not parties to the agreement. There is nothing on record to indicate that they had concurred for the sale. Hence, prima facie, they are not bound by the agreement. These respondents along with respondent Nos. 1 and 2 have executed a sale-deed in favour of respondent Nos. 6. He has paid the entire sale consideration of Rs. 1 crore and 40 lakhs. The respondent No. 6 claims to be a bonafide purchaser for value. It is to be noted that an agreement executed in fauvr of the appellant was not registered. There is no material to indicate that respondent No. 6 was aware of the previous agreement to sale.”*

3. Thus, the Court noted that respondent nos. 3 to 5 are co-owners and were not party to the agreement and are thus not bound by its terms. The subsequent application has been filed by the petitioner on the ground that respondent no. 6 has now converted user of land for non-agriculture purpose and order to that effect has been obtained by suppressing the fact of pendency of suit. Learned counsel for the petitioner further submits that

appeal was filed before the Divisional Commissioner and the matter has been remanded back to the Collector and is pending consideration.

4. The above status, however, will not change the fundamentals of the suit in the sense, fact remains that the petitioner entered into agreement to sale with respondent nos. 1 and 2, who were not the exclusive owners of the property. The respondent nos. 3 to 5 are co-owners and are/were not party to the agreement dated 10-8-2020 and that respondent nos. 3 to 5 are not bound by the said agreement as held by this Court in the earlier round of litigation.

5. In that view of the matter, there appears no change in circumstance and, therefore, the trial Court has rightly rejected the subsequent application. I do not find any perversity in the order impugned. The writ petition is dismissed.

(Anil L. Pansare, J.)