



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

WRIT PETITION NO. 4837/2023

Kishor Manoharrao Ayachit .Vs. Prajakt Jivan Choudhary and another

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

Court's or Judge's orders

Mr. S. M. Pande, Advocate for petitioner.
Mr. S. R. Bhongade, Advocate for respondent No1.
Mr. A. C. Suryawanshi, Advocate for respondent No.2.

CORAM : ANIL L. PANSARE, J.

DATE : AUGUST 27, 2024

Heard Mr. S. M. Pande, counsel for petitioner, Mr. S. R. Bhongade, counsel for respondent No.1 and Mr. A. C. Suryawanshi, counsel for respondent No.2.

2. The petitioner is before the Court in writ jurisdiction against the concurrent findings recorded by the Courts below. The Trial Court as well as the First Appellate Court have held that the protection under Section 53A of the Transfer of Property Act, 1882, cannot be extended to the petitioner-plaintiff. The common reason assigned by both the Courts below is that agreement to sell under question entered into by the petitioner and respondent No.1 does not disclose that possession of the suit property was handed over to the petitioner towards part performance of the contract or for the purpose of any other reason.

3. The petitioner claims to have entered into agreement to sell the suit property, which consists of three apartments on three different floors. The building under question is ground plus three floors structure, ground floor being reserved for

parking. The total consideration amount agreed was Rs.87,50,000/-, out of which the petitioner has paid to respondent No.1, Rs.37,00,000/-. So far as the balance payment is concerned, it is the case of the petitioner that out of three, two flats were released in favour of respondent No.1, who in turn sold it to two different persons and thus received balance amount. This plea, however, has been not reduced into writing in agreement or in any other document and, therefore, cannot be accepted. What remains is, one more flat, which according to the petitioner is in his possession towards part performance of the contract.

4. As such, counsel for the petitioner submits that respondent no.1, in his reply/written statement, has admitted handing over possession to the petitioner. However, perusal of the reply indicates that the respondent No.1 has specifically denied that on receipt of Rs.37,00,000/- he has placed petitioner in possession of the first floor apartment. According to respondent No.1, upon request made by the petitioner, possession was given to him with an understanding that he will release the balance amount of consideration within agreed time and thus handed over the keys of the first floor to occupy the premises as permissible occupier.

5. This pleading, by no stretch of imagination, can be said to be admitting handing over possession of the suit property under the part performance of the contract.

6. In the light to above, both the Courts below have held that prima facie there is no document or evidence in respect of the petitioner's plea that the suit property was given in his

possession towards part performance of the contract. Most importantly, two out of three flats were allegedly released in favour of respondent No.1 and thus, petitioner himself says that he is not in possession of the entire premises but is holding possession of one out of three apartments, which according to respondent No.1 is permissive possession.

7. In the light of above, I do not find any reason to interfere with the order passed by both the Courts below.

8. The writ petition is accordingly dismissed.

9. At this stage, counsel for the petitioner submits that there are other proceedings pending between the parties, which includes complaint made under Consumer Protection Act. Those proceedings will have to be decided on its own merit. The Court or the authorities dealing with such proceedings should render finding on own merit of the proceeding and should not get influenced by the observations made by this Court.

(Anil L. Pansare, J.)