



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

Writ Petition (WP) No. 5021 of 2024

Nazma Begum Wd/o Babbukhan and others

Versus

Akhtari S/o Mohd. Ummar and others

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

Court's or Judge's Order

Shri N.A.Lalwani, Advocate for the petitioners.

Shri S.D.Khati, Advocate for the respondent nos.
1 and 2.

CORAM : N.R.BORKAR, J.

DATED : 3rd OCTOBER, 2024.

The respondent Nos. 1 to 3 herein had filed a suit for specific performance of contract against petitioners' predecessor – Babukhan S/o Yusuf Khan and the petitioners' predecessor had filed a suit against the respondent Nos. 1 to 3 for eviction. The trial Court had decided both the suits together. The trial Court decreed the suit filed by respondent Nos. 1 to 3 and dismissed the suit filed by petitioners' predecessor. The operative part of the decree reads thus:

“1. R.C.S. No. 1863/83 filed by Baffarkhan and others to the extent of recovery of possession is dismissed with costs.

2. Plaint in R.C.S. No. 1863/83 be returned to plaintiff for presentation to Judge, Small Causes Court, Nagpur for the purpose of recovery of arrears of rent to the extent of Rs.360/-.

3. Plaintiff to apply to this court for return of plaint under provisions of Order 7 Rule 10-A of C.P.C.

4. R.C.S. No. 182/86 filed by Banobi and others in decreed with costs.

5. It is ordered that plaintiff's R.C.S. No. 182/86 shall deposit it Rs.16,000/- in court within one month from today and thereafter within 15 days defendant no.1 Babbukhan shall execute a sale deed of suit property described in para-9 of plaint in R.C.S. No. 182/86.

6. Plaintiffs in R.C.S. No.182/86 are entitled for possession of third room which is in possession of tenant after a sale deed is executed. Plaintiffs in R.C.S. No. 182/86 have to take appropriate steps for recovery of possession.

7. In case, if plaintiff's in R.C.S. No. 182/86 fails to deposit Rs.16,000/- in court, as stated above then the suit will automatically stands dismissed.

8. If, Babbukhan fails to execute the sale deed after deposit of Rs16,000/- as stated above, then sale deed can be executed through the process of court.

9. Plaintiffs of R.C.S. No. 182/86 shall bear the costs of registration and execution of sale-deed.

10. Declared in open court.”

2. During the pendency of the execution of decree respondent Nos. 1 to 3 herein had filed an application for amendment of plaint. The amendment was sought in respect of description of suit property. By the order impugned the learned trial Court has allowed the said amendment.

3. I have heard learned counsel for the petitioner and the learned counsel for the contesting respondents.

4. Learned counsel for the petitioners submits the room in occupation of one Hamjamiya was never subject matter of the suit. It is submitted that suit was in relation to only two rooms. It is submitted that the trial Court has thus committed an error in allowing the application for amendment of plaint in respect of third room. In support of submission he has drawn my attention to the plaint averments in paragraph No.3 and the description of the suit property mentioned in paragraph No. 9 of the plaint.

5. I have perused the paragraph Nos. 3 and 9 of the plaint and for ready reference, they are reproduced herein below:

“3. The said rooms had gone delapidated. Hence the City of Nagpur Corporation Nagpur had issued notices to the plaintiff no.1, the said two tenants and also to the on or about 21-7-1982 asking them to effect repairs to their respective portions to avoid collapsing the same any moment. Guljarmiya showed his inability to spend anything for the said repairs for want of money so also the defendant No.1 the Landlord also showed his inability to spend for the said repaired. Mohd.Sabir the defendant no.2 the only male member of the family of the deceased Mohd. Umar, comprising of himself and the plaintiff nos. 1 to 4 showed his willingness to purchase the

said two rooms which was the eastern half of the house No. 317 of Khadan, C.No. 16/22, Nagpur, including that of which was then occupied by Guljarmiya who had left the said room as it was not worth for residence. The defendant no.1 also showed his willingness to sell the same. Mohd. Sabir the plaintiff No.1's son and brother of plaintiff nos. 1 to 4 entered into an Agreement with the defendant no.1 to purchase and the defendant no.1 agreed to sell the eastern half portion to them through Mohd. Sabir for a consideration of Rs.17,000/-. The said Agreement took place in writing on 5-8-'82. The defendant no.1 received Rs.1,000/- by way of earnest amount from the defendant No.2 on that date. He had agreed to receive further Rs.2,000/- by 5-10-'82 and the Sale-Deed was to be taken within 6 months at the costs of the purchasers, after due legal formalities were completed by the vendor defendant No.1.

9. Description of the property in suit.

Eastern half of house No. 317(332) situated in Khadan Circle No. 16/22, Nagpur bounded by :

To East : Road and Yakuubali Chawl.

To West: Angan and Chawl No. 332 in front

To North : Room occupied by Hamjamiya and

To the South : House of Madhekhan.

Including land structure full share within the aforesaid boundaries.”

6. The learned counsel for contesting respondent Nos. 1 to 3 submits that there is a already decree in respect of third room and thus application was moved to correct the inadvertent error which occurred while mentioning the description of suit property in the plaint.

7. I have perused the decree. There is a specific decree in respect of third room (Clause 6 of the operative part of the decree). The decree was unsuccessfully challenged upto this Court. Considering the overall facts and circumstances, I am not inclined to interfere with the impugned orders. Hence, the petition is dismissed.

[N.R.BORKAR, J.]