



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

Writ Petition No. 6318 of 2023

[Suresh S/o. Janna Manwatkar and ors. ..vs.. Shri Prabhakar S/o. Shrvanji Kohad]

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

Court's or Judge's orders

Ms. Sejal A. Lakhani, Advocate for the petitioners
Mr. Mohan A. Vishnu, Advocate for the respondent

CORAM : ANIL L. PANSARE J.

DATED : 21-10-2024

Heard.

2. The petitioners – original defendants are aggrieved by judgment and order dated 18-11-2021 passed by the first appellate Court in Misc. Civil Appeal No. 56/2021 by which the appeal has been dismissed. In other words, the finding of the trial Court has been upheld.

3. The trial Court has, vide order dated 1-2-2021, passed below application, Exhibit 5, allowed the application filed by the respondent – original plaintiff seeking temporary injunction. The petitioners have been restrained from creating third party interest in the suit field till decision of the suit.

4. Having heard both sides and having gone through the material placed before me, what transpires is that the parties herein have entered into agreement to sale. The respondent agreed to purchase the suit field for Rs. 30,00,000/- by agreement dated 24-7-2020. Out of said amount, the respondent has paid Rs. 12,00,000/-. The respondent apprehended the alienation of the suit

field at the hands of petitioners. According to the respondent, the Defendant no. 1 has taken back the original agreement to sale on the pretext of obtaining signature of his daughter i.e. petitioner no. 5 – original defendant no. 5. He, however, did not return the document, rather the petitioner no. 1, in order to create third party interest, is showing the suit field to the proposed purchaser.

5. Both the Courts below found substance in the aforesaid plea and, accordingly, restrained the petitioners from creating third party interest in the suit field.

6. The plea of petitioners before the trial Court was that they have not executed agreement to sale. Both the Courts below found that except for bald statement, there is nothing to indicate any substance in the said theory. Learned counsel for the petitioners submits that petitioners are ready to pay back amount of Rs. 12,00,000/-. Repayment cannot be a ground for finding fault in the impugned order.

7. The counsel for the petitioners during the course of argument could not point out to the Court that there is any reason to not believe that the parties have entered into agreement to sale and the contract is valid. Rather, the willingness shown by the petitioners to repay Rs. 12,00,000/- is, in a way, admission of entering to contract with respondent.

8. In view of the above, I do not find any perversity in the impugned order. There is no merit in the

petition. The petition is accordingly dismissed with no order as to costs.

(Anil L. Pansare, J.)

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