



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

WRIT PETITION NO. 374 OF 2024

1 Natthu S/o Zitya Mendhe, **PETITIONERS**
Aged about 69 years,
Occupation : Agriculturist

2 Sachin S/o Natthuji Mendhe,
Aged about 40 years,
Occupation : Agriculturist,
Both R/o Plot No. 278, Old Bagadganj,
Nagpur, Distt. Nagpur

VERSUS

1 Prakash Shriram Bhopde, **RESPONDENTS**
Aged about : Major,
Occupation : Agriculturist
R/o Bhagatsingh Ward, Ramtek,
Tah. Ramtek, Distt. Nagpur.

2 Abhay Natthuji Mendhe,
Aged about 40 years,
Occupation : Agriculturist

3 Avinash Natthuji Mendhe,
Aged about 42 years,
Occupation : Agriculturist,
Both R/o Plot No. 278, Old Bagadganj,
Nagpur, Distt. Nagpur.

4 Rajesh Bajrang Lende,
Aged about 44 years, Occupation : Nil,
R/o Shiv Nagar, Tarsa Road, Kanhan,
Tah. Parshioni, District – Nagpur.

5 Koteswarrao Vyankateswarrao Ravi,
Aged about 50 years,
Occupation : Agriculturist,
R/o Bhendala, Tah. Mouda,
District – Nagpur

Mr. A.D. Girdekar, Advocate for petitioners
Ms. A.M. Telange, Advocate for Respondent Nos.2 and 3
Mr. S.A. Deole, Advocate for Respondent No.4
Mr. M.A. Vishnu, Advocate for Respondent No.5

CORAM : BHARAT P. DESHPANDE, J.

DATE : 11th MARCH, 2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard both the parties with consent for final disposal.

2. The order impugned in the present petition is dated 20/09/2023, passed below Exh.122 in Regular Civil Suit No. 63/2006, pending before the learned Civil Judge, Junior Division at Ramtek.

3. The learned counsel for the petitioners would submit that the application was filed for summoning the defendant No.4 since during pendency of the suit, the sale deed was executed by the defendant Nos.1, 2 and 3 in favour of defendant No.4 by making a statement that no proceedings are pending in the

Court. He would submit that the suit initially filed is for injunction and cancellation of sale deed.

4. The learned counsel for the petitioners would submit that the learned trial Court failed to consider the provisions of Order XVI Rule 14 of the Code of Civil Procedure (CPC), which gives a discretion to the Court to summon any witness or even a party to the suit, if so desired to decide the suit.

5. The learned counsel for the respondents would submit that application itself nowhere disclosed the reason for summoning the defendant No.4. He would submit that the prayer in the application is directly for cross-examination of the defendant No.4, which cannot be permitted unless there is examination-in-chief of the said party on record.

6. On perusal of the impugned order and more specifically para No.12, it reveals that the learned trial Court has completely ignored the provisions of Order XVI Rules 14 and 21 of CPC, which gives discretion to the trial Court to summon any witness or even a party to the suit at any time as it thinks necessary. There is absolutely no discussion on such discretion, however,

para No.12 would reveal that the application is rejected stating that there is no provision in the CPC to summon the defendant No.4.

7. The impugned order, therefore, appears to be passed with non-application of mind to the concerned provisions. For this limited purpose, the impugned order requires to be quashed and set aside and the matter is required to be remanded to the concerned Court for deciding such application afresh.

8. It is needless to mention that the learned trial Court should give an opportunity to the parties to argue the application and then decide in accordance with law.

9. It is made clear that this Court has not gone into the merits of the contentions raised by the parties. All contentions of the parties are kept open.

10. The impugned order is hereby quashed and set aside. The matter is remanded to the learned trial Court to decide the application at Exh.122 afresh and by giving opportunity to the parties. Such application shall be decided within a period of one month from the date of receipt of the copy of this order. The

petition stands disposed of in the above terms. No costs.

11. Rule is made absolute in the above terms.

12. The parties to act on the authenticated copy of this order.

(BHARAT P. DESHPANDE, J.)

MP Deshpande