



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

APPEAL AGAINST ORDER NO. 65 OF 2023

1. Ramsingh s/o Hirasingh Thakur,
aged about 71 years, Occ. Cultivation.
2. Sau. Ragini w/o Ramsingh Thakur,
aged about 62 years, Occ. Housewife.
3. Sau. Swati w/o Namitsingh Chouhan,
aged about 40 years, Occ. Housewife.
4. Sau. Ruchita w/o Mangesh Thakur,
aged about 38 years, Occ. Housewife.
5. Nivedita d/o Ramsingh Thakur,
aged about 36 years, Occ. Cultivation.
6. Ashwini d/o Ramsingh Thakur,
aged about 36 years, Occ. Cultivation.

All are R/o Shri Nagar, Near Narendra Nagar,
Nagpur, Tah. & Dist. Nagpur.

**...APPELLANTS/
ORIGINAL DEFENDANTS**

Versus

1. Shri Anantsingh s/o Hirasingh Thakur,
aged about 73 years, Occ. Retired.
2. Vikrant @ Vicky s/o Anantsingh Thakur,
aged about 37 years, Occ. Business.

Both are R/o House No. 370, Shri Nagar,
Near Narendra Nagar, Nagpur,
Tah. & Dist. Nagpur.

**...RESPONDENTS/
ORIGINAL PLAINTIFFS**

Shri M.P. Khajanchi, Counsel for the appellants.
Shri V.K. Paliwal, Counsel for the respondents.

CORAM : ANIL L. PANSARE, J.

ARGUMENTS WERE HEARD ON : JANUARY 5, 2024

JUDGMENT IS PRONOUNCED ON : JANUARY 8, 2024

JUDGMENT :

The appellants/original defendants are aggrieved by the order dated 3/10/2023 passed below Exh.5 by the learned 3rd Joint Civil Judge Senior Division, Nagpur in Special Civil Suit No. 707/2023. By the impugned order, the learned trial Court has restrained the appellants/defendants from creating third party interest and from disturbing their possession over the suit property till the decision of the suit.

2] Having heard both the sides, it appears that respondent no.1/plaintiff no.1 had entered into an agreement to sell with the appellants the agricultural land bearing Survey No.26/1, admeasuring 5.52 HR. Respondent no.2/plaintiff no.2 is the son of respondent no.1. He is/was not party to the agreement. Despite such status, respondent no.2 has joined respondent no.1 in the suit seeking declaration, permanent

injunction and specific performance of contract.

3] The reason is pretty obvious. It appears that the appellants/vendors have permitted respondent no.2 to cultivate the suit land. This status is being exploited to set the relief of protection of possession and hence respondent no.2 has joined respondent no.1 as plaintiff in the suit.

4] There occurred certain disputes and, therefore, on 26/5/2023, a police complaint was lodged by appellant no.1 stating therein that he had entered into an agreement to sale, the agricultural land under question to respondent no.1. He (appellant no.1) was unable to cultivate the land because of his old age and, therefore, he has permitted respondent no.2, the son of respondent no.1, to cultivate the land. However, the respondents started claiming that they are in possession of the land and have even installed the board. Accordingly, the report was lodged.

5] The learned trial Court, relying upon the aforesaid complaint, has taken a view that the appellants themselves

have admitted that the possession of the land has been handed over to the respondents. Accordingly, it has protected the possession of the respondents.

6] To my mind, the learned trial Court has ignored crucial facts. Firstly, respondent no.2 could not have sought specific performance of contract. As stated earlier, he is not a party to the contract and, therefore, cannot seek specific performance of contract. So far as possession is concerned, except for the alleged oral report lodged by appellant no.1, the learned Counsel for respondent no.2 failed to show any other cogent evidence that respondent no.2 is in possession of the suit land. Further, the report lodged with police, if is to be considered, what has been stated by appellant no.1 is that he has permitted respondent no.2 to cultivate the land because he (appellant no.1) was unable to cultivate the land because of his old age. In that sense, appellant no.1 has permitted respondent no.2 to cultivate the land and nothing else. This arrangement of cultivation cannot be said to be the act of handing over possession of the suit land to respondent no.2 and even if such

possession is given, it cannot be the subject matter of contract entered into by an between the appellants and respondent no.1. It is nobody's case that appellant no.1 has handed over the possession to respondent no.2 in the capacity of agent of respondent no.1 and/or the possession was handed over in furtherance of the agreement entered into by and between the parties.

7] So far as the apprehension of the plaintiffs as regards creating third party interest is concerned, respondent no.2, having not entered into contract with the appellants, is not even entitled to plead such apprehension. The respondents, who have jointly filed plaint, therefore, cannot raise a plea of the appellants intending to create third party interest in the suit property. The finding of the learned trial Court that the respondents have *prima facie* proved that the appellants are all set to create third party interest is, therefore, erroneous.

8] The learned Counsel for the respondents made an attempt to justify the order but could not answer query made by the Court as to how respondent no.2 can sue the appellants

for specific performance of contract when he is/was not signatory/party to the contract.

9] It is thus evident that the learned trial Court has committed an error in taking a view that possession has been given to the respondents. This view is, therefore, unsustainable.

10] As regards creation of third party interest in the suit property, the learned Counsel for the appellants has made a statement that the appellants will not create third party interest in the suit property pending trial.

11] In view of above, the impugned order dated 3/10/2023 passed below Exh.5 by the learned 3rd Joint Civil Judge Senior Division, Nagpur in Special Civil Suit No. 707/2023 is not sustainable and stands quashed and set aside. The statement made by the learned Counsel for the appellants that they will not create third party interest in the suit property pending suit is accepted.

12] The appeal is disposed of in the above terms with
no order as to costs.

Sumit

JUDGE