

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

WRIT PETITION NO.304/2024

Sumedha s/o Nilkanthrao Patil and another

Vs.

Suresh s/o Shyamraoji Umbarkar and others

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

Court's or Judge's orders

Shri C.B. Dharmadhikari, Advocate for petitioners
Shri V.B. Gawali, Advocate for respondent Nos.1 to 3

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 18/02/2025

Heard learned Counsel for both the parties.

2. Original plaintiffs/respondent Nos.1 to 3 filed a suit for cancellation of sale-deed and for permanent and mandatory injunction. It also moved application under Order 39, Rule 1 and 2 of the Code of Civil Procedure, Exhibit-5. The learned Civil Judge Senior Division, Wardha rejected the application below Exhibit-5, for the reasons that the agreement executed between plaintiff and defendant Nos.1 and 2 dated 27.08.2015 is on Rs.100/- stamp paper.

3. However, it appears that no flat numbers are mentioned in the alleged agreement and it was not signed by attesting witness. Simultaneously, another document was executed i.e. power of attorney to sale all the flats in the suit property after construction. It is also observed by learned Trial Court that, on perusal of development agreement as well as of general power

of attorney, it *prima facie* appears that it is executed by plaintiff No.1 only. In that case, taking of possession by plaintiff Nos.2 and 3 of respective flats is also relevant. On the contrary, defendant Nos.3 and 4 submitted loan agreement, from which, it appears that from time to time, installment amount deducted from their account. Considering the conduct of plaintiffs taking possession before completion of its work during existence of registered agreement to sell, which are duly executed, the application for injunction of respondent came to be rejected by trial Court.

4. However, the appeal was carried out before the learned District Judge, Wardha bearing Misc. Civil Appeal No.09/2023, the learned District Judge allowed the application specifically on the ground that the plaintiff No.1 has not parted with the title over those three flats to the defendants. Therefore, their possession cannot be said to be illegal. The Defendant Nos.3 and 4 have already filed counter claim for relief of specific performance. Admittedly, plaintiffs are in possession of flats in dispute.

5. As such, at this juncture, it would not be proper to interfere in the order passed by learned District Judge, Wardha. It is informed that suit is fixed for evidence. However, considering the facts involved in the matter, it would be appropriate to direct the learned 6th Joint Civil Judge Senior Division, Wardha to dispose of Special Civil Suit No.07/2022 within a period of one year.

6. Accordingly, Writ Petition is dismissed with above directions. No order as to costs.

JUDGE

R.S. Sahare