



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

Writ Petition No. 3629 of 2025

[Rajesh Ninaji Nikhade ..vs.. Ajay Maniklal Udasi and anr.]

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

Court's or Judge's orders

Mr. R. L. Khapre, Senior Advocate assisted by Mr. P. L. Amale and Mr. B. G. Raut, Advocate for the petitioner

CORAM : ANIL L. PANSARE J.

DATED : 15-07-2025

Heard learned Senior Counsel for the petitioner.

The petitioner – plaintiff filed a suit for declaration that sale deed executed by him in favour of respondent no. 1 – original defendant no. 1 was null and void for non payment of sale consideration.

The sale deed refers to consideration amount of Rs. 50,00,000/- and payment by two cheques with a rider that if the amount mentioned in cheques is not received by the petitioner, the sale deed shall stand cancelled.

Learned Senior Counsel submits that both the cheques were taken back by respondent no. 1 with a promise to issue fresh cheque which was never given. Accordingly, suit came to be filed. Respondent no. 1 appeared and opposed the suit on the ground that he made payment in cash. Learned Senior Counsel submits that this averment is made without any evidence.

Thus, there is dispute as to whether the amount of consideration was received by the petitioner. There however, cannot be any dispute as regards recitals in the sale deed, which states that, if the amount of consideration is not received, the sale deed shall stand cancelled.

Respondent no. 1 filed application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short 'the Code'), which came to be allowed by the trial Court on the ground that since the petitioner himself was party to the sale deed, he cannot file such suit. The petitioner filed appeal against said order and along with appeal, filed application seeking injunction against respondents from interfering with the possession and further from creating third party interest. The first appellate Court allowed the application partly. The respondents were restrained from creating third party interest, however, possession has been not protected.

Learned Senior Counsel submits that the petitioner approached trial Court with categorical plea that he is in possession of the suit property. The denial of said fact is evasive and, therefore, cannot be said to be specific denial as required under Order VI Rule 4 of the Code.

Issue notice on petition and interim relief, returnable in three weeks.

In addition to usual mode, the petitioner shall serve the respondents through Speed Post and also through counsel appearing before the first appellate Court and shall file affidavit of service.

(Anil L. Pansare, J.)