



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

WRIT PETITION NO.3465 OF 2025

RAJU S/O JYOTIPRASAD MISHRA
VERSUS
SMT. TABASSUM KHAN W/O JAVED KHAN AND OTHERS

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. M.S. Abbasi, Advocate for Petitioner.
Mr. Inamul Haque, Advocate for Respondent No.2.
Mr. S.A. Qazi h/f Mr. S.Z. Qazi, Advocate for Respondent No.6.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATED : 12th FEBRUARY 2026

PER COURT :-

1. Heard learned Advocate for the petitioner as well as learned Advocates for respondent Nos.2 and 6.

2. The petitioner has challenged the order dated 21.12.2024, passed by 9th Joint Civil Judge Senior Division, Nagpur, in Spl.C.S. No.65 of 2021, at Exhibit 134, directing defendant No.6 (petitioner herein) to deposit an amount of Rs.75,71,700/-, which is an amount towards part of the sale consideration.

3. Learned Advocate for the petitioner submits that, while passing the impugned order, the trial court has not taken into consideration the earlier payments made by defendant No.6, to the

father of the plaintiff viz. Hafiz Baig S/o. Rahim Baig, during his lifetime, to the extent of Rs.54 Lakhs. He, therefore, submits that the direction to pay an amount of Rs.75,71,700/- is without considering the total payments made and based on wrong calculations.

4. The controversy arises in the suit filed by the plaintiff seeking declaration, partition, separate possession and mesne profits with respect to several properties as mentioned in the plaint including property bearing Khasra Nos.71 and 72, situated at Mouja Chicholi, Tahsil Nagpur (Rural), Dist. Nagpur. The instant petition pertains to the order passed by the trial court with respect to this property only.

5. It is pointed out that a sale-deed with respect to the said property is executed in the year 2019, for total consideration of Rs.2,14,89,000/-. It is the contention of the plaintiff in the suit that this sale-deed was executed by her father viz. Mr. Hafiz Baig, however, entire consideration amount was not received as the cheques towards sale consideration were not presented by her father during his lifetime. The plaintiff has, therefore, filed an application at Exhibit 134 in the suit seeking directions to defendant No.6 to deposit the entire balance consideration amount.

6. Learned Advocate for the petitioner submits that the petitioner/defendant No.6 had filed his reply on 11.10.2024 to the

said application and pointed out the payments made by him to the father of the plaintiff during his lifetime including the total payment of Rs.54 Lakhs, in which Rs.4 Lakhs was paid by way of cash, which was acknowledged by the father of the plaintiff. He submits that these payments were made towards the sale consideration of said property and were received by other defendants along with her father. He, therefore, submits that, while passing the impugned order, the trial court ought to have taken into consideration the payments made by defendant No.6 towards sale consideration. The impugned order having been passed without considering the total payments made by defendant No.6 is unsustainable.

7. Learned Advocates for respondent Nos.2 and 6 submit that respondent No.2, who is defendant No.2 in the suit and other legal heirs of deceased Hafiz Baig, have not actually received the amount, which is alleged to have been paid by defendant No.6 to the father of the plaintiff viz. Hafiz Baig.

8. Considering the fact that the payment of Rs.48 Lakhs was allegedly paid by RTGS and an amount of Rs.4 Lakhs was paid in cash, which is duly acknowledged, same ought to have been considered by the trial court while deciding the application at Exhibit 134. Having regard to the fact that the details of payments

made by defendant No.6 to the father of the plaintiff were disclosed in the reply, non consideration of the said amount renders the order unsustainable.

9. Hence, in the interest of justice, it is desirable that the application at Exhibit 134 is decided afresh after considering the payments made by the parties including the amount of Rs.54 Lakhs as allegedly paid by the petitioner/defendant No.6. Hence, following order is passed.

ORDER

- I) The order dated 21.12.2024, passed by 9th Joint Civil Judge Senior Division, Nagpur, in Spl.C.S. No.65 of 2021, at Exhibit 134, is quashed and set-aside.
- II) The matter is remitted to the trial court for deciding the application at Exhibit 134 afresh, after giving an opportunity of hearing to all the parties concerned.
- III) The writ petition is disposed of.
- IV) No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)