

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

CRIMINAL APPLICATION (APL) NO. 497 OF 2011

(Nilesh Haribhau Mahajan Vs. The State of Maharashtra & another)

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

Court's or Judge's orders

Shri A. C. Dharmadhikari, Advocate for the applicant.
Shri M. J. Khan, A.P.P. for respondent No.1.-State.
S/Shri K. J. MahajanA & V. A. Dhabe, Advocates for
respondent No.2.

CORAM : A. B. CHAUDHARI, J.
: 23 NOVEMBER, 2015

Heard learned Counsel for the rival parties. Seen the first information report lodged by respondent No.2-complainant with police station Dhantoli, Nagpur.

It is an admitted position that there was unfortunate death of the husband of respondent No.2 which said to have occurred due to he committing suicide. The dispute appears to be between the mother-in-law and daughter-in-law. The present applicant is the other son-in-law of the mother-in-law of respondent No.2. From the submissions made by the learned Counsel, it appears that the dispute about the share to be received by respondent No.2 and distribution of the property amongst the family members including a flat at Bajajnagar, Nagpur, in which respondent No.2 is admittedly residing, are not yet resolved. Learned

Counsel for the parties state that as no proceedings for partition have been initiated, distribution of the property has not taken place.

Perusal of the FIR shows that offences punishable under Sections 448, 511, 294, 504, 506-B of the Indian Penal Code have been registered. On perusal of the FIR, I find that none of the persons on whom the complainant made allegations of tress pass, had any intention to take forcible possession of the flat. There is no mention in the FIR that they had caused loss, damage or committed any theft. The only allegation in the FIR is that when the complainant returned back from her village Chanai, Tq. Kelapur, she had seen the applicant and one Prakash attempting to cut the lock of the flat in question. It is not in dispute that the disputed flat is joint property of all the share holders including respondent No.2 and respondent No.2 is eventually in possession of the said flat. But, then the applicant or his mother-in-law, having share in the flat, cannot be said to the persons in the category of tress passers since they are having right or share in the flat also. At any rate, the dispute appears to be of purely civil nature amongst the family members and that too because of non distribution of the property particularly after the death of respondent No.2. Then there is allegation of giving abuses.

But, no ingredients of the offence under Section 294 of I.P.C. being at a private place are satisfied. In that view of the matter, I think, the dispute between the parties is a family dispute over the distribution of the property and the right of respondent No.2 to get share in it after the death of her husband must be underscored. Hence, in order to see that distribution of the property is properly made for which there should be no legal subterfuge and in order to meet the ends of justice, I make the following order.:

ORDER

Rule is made absolute in terms of prayer Clause-(i).

It is made clear that the parties shall take steps to have distribution of the property amongst them.

Shri Dharmadhikari, learned Counsel for the applicant assures that the mother-in-law of his client would initiate such steps in order to make proper distribution of the properties.

JUDGE