

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

WRIT PETITION NO.6744 OF 2018

Nana @ Vasantao s/o Narayanrao Ambekar (Dead) through his Legal Heirs : Smt. Vijaya wd/o
Nana @ Vasantao Ambekar and others

vs

Ramkrushna Maniksa Yelne and another.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R.D.Karode, Advocate for petitioner.

Shri A.S.Dhore, Advocate for respondent nos. 1 & 2.

CORAM : A.S.CHANDURKAR, J.

DATED : June 21, 2019

Heard learned counsel for the parties and
perused the documents placed on record.

According to the petitioners the trial Court
was not justified in directing the plaintiff in
R.C.S.No.41/2010 to lead evidence. It is submitted that
as the respondents had filed a suit for possession in
earlier point of time, the trial Court ought to have
directed the plaintiff in R.C.S.No.18/2010 to lead
evidence. Reliance is placed on the decision in
Zainabee Mohammad Bashir and others Vs.
Shivkumar and another, AIR 2018 (NOC) 709(BOM)
in that regard.

The aforesaid submissions are opposed by learned counsel for the respondents. It is submitted that since the petitioner is claiming entitlement on the basis of Will deed dated 16.08.1979, the trial Court was justified in passing the impugned order.

On hearing the learned counsel for the parties, it is seen that both the suits have been consolidated for a common trial. The plaintiffs in R.C.S.No.18/2010 seek possession of the suit property while the plaintiff in R.C.S.No.41/2018 seeks permanent injunction based on the Will dated 16.08.1979. Considering the nature of issues framed in both the suits, no fault can be found with the impugned interlocutory order directing the plaintiffs in R.C.S. No. 41/2010 to lead evidence. The writ petition is therefore dismissed with no orders as to costs.

JUDGE