

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

Writ Petition No.1692 of 2020
Henry Rocque Vs. Vincent Rocque

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

Court's or Judge's orders

Mr. N.R. Bhishikar, Advocate for the petitioner
Mr. Rahul Bhangde, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : JULY 13, 2020

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard Learned counsel for rival parties.

3. By this writ petition, the petitioner (original defendant) has challenged impugned order dated 07/11/2019, passed by the Court below, whereby application at Exhibit-9 filed by the respondent (original plaintiff), was allowed.

4. The respondent has filed suit for partition, separate possession and share in rent in the year 2017 before the Court below. It is undisputed that the petitioner and respondent herein are brothers. It is also not in dispute that the house property in question in the present case consists of 3 floors and that the structure does not have a lift. It is also not seriously disputed that the 8 rooms on the ground floor are in the occupation of the

petitioner and that the respondent is in occupation of 6 rooms on the second floor. The first floor is occupied by tenants. The learned counsel for the parties have also not raised serious objection to observations made in paragraph 18 of the impugned order, wherein it has been stated that there are total four brothers, including the petitioner and respondent herein, out of whom, two brothers have relinquished their respective shares in favour of the petitioner and the respondent respectively. As a result, the petitioner and respondent are joint owners and having half share each in the aforesaid suit property.

5. During the pendency of the said suit, respondent moved an application at Exhibit-9 making a specific prayer for grant of temporary possession of the three rooms on the ground floor of the suit property on the ground that he was finding it difficult due to health problems to continue to occupy the second floor of the suit property. It was stated in the application that since the ground floor consists of 8 rooms and the respondent was entitled to at least half share in the entire suit property, temporary possession of three rooms could certainly be granted to him in view of health condition specified in the aforesaid application moved before the Court below. The said application was opposed by the petitioner and it was claimed that the health issues sought to be raised by the respondent pertained to a period of time much earlier to the year 2017 onwards since when the suit was pending. It was submitted that no emergent ground was projected in the application at Exhibit-9 to justify the prayer made therein.

6. By the impugned order, the Court below has allowed

the application in the following terms :

- “1. Application is allowed
2. Defendant nos. 1 is directed to hand over the possession of three rooms on the western side of ground floor of the suit property along with access from the front side till the final disposal of this suit.”

7. The Court below has considered the application at Exhibit-9 and the documents placed on record by the respondent in support of his claim that due to health issues pertaining to his age, he was finding it difficult to continue to live on the second floor and he was entitled for temporary possession of the 3 rooms as claimed in the application. The Court below has scrutinized the said documents and it is found in paragraph 13 of the impugned order that there is no lift available in the building and further that the respondent appears to have health issues including kidney problem in the year 2016 and also pain below the knee in his right leg and sciatica in the left leg. Apart from this, there were documents to show that the respondent had undergone angioplasty in the years 2001 and 2006. Thereafter, the Court below has taken into consideration the aspect of the petitioner as well as the respondent having half share in the suit property in the light of other brothers having relinquished their respective shares and the convenience of facilities on the ground floor has been considered by the Court below in order to examine as to whether temporary possession of the three rooms as claimed by the respondent could be granted. After analyzing all these aspects, the Court below has come to a considered conclusion that application at Exh.9 deserved to be granted and accordingly the impugned

order was passed in the manner quoted above.

8. Considering the manner in which the Court below has decided the application at Eexhibit-9, in the light of the material on record, this Court is of the opinion that the petitioner has not been able to make out a case for invoking writ jurisdiction to interfere with the impugned order passed by the Court below.

9. In view of above, the writ petition is found to be without any merits and accordingly, it is dismissed.

10. It is made clear that dismissal of this writ petition shall not come in the way of the parties making a serious attempt to settle the inter-se dispute between them, considering that they are brothers and they are of advanced age.

11. This order be communicated to the counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE