

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

APPEAL AGAINST ORDER NO.9 OF 2021

Vasantrao Damruji Timande and others

Vs.

Varsha Digambar Tadas

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

Court's or Judge's orders.

Shri A.A. Dhawas, Advocate for appellants.

CORAM : AMIT B. BORKAR, J.

DATE : 6th JULY, 2022.

By this appeal, the appellants are challenging the order dated 14.10.2020 rejecting application of the appellant under Order XXXIX Rules 1,2 of Code of Civil Procedure (CPC) seeking protection of his exclusive possession over the suit property.

2. The appellants are the original plaintiffs, who had filed Regular Civil Suit No.45 of 2016 seeking declaration that will dated 09.05.2011 be declared *null and void* ready for partition of suit property. Learned Trial Court after recording evidence by judgment and decree dated 03.07.2020 dismissed the same. The appellants being aggrieved by the said judgment and decree filed Regular Civil Appeal No.61 of 2020. In the said appeal, appellants filed an application under Order XXXIX Rules 1 and 2 of the CPC seeking injunction to protect exclusive possession over the suit property. The said application has been rejected by

the impugned order holding that the appellants are not entitled to seek injunction having effect of ousting co-sharer from the suit property.

3. Having carefully considered the impugned order, in my opinion there is no dispute that the relief claimed by the appellants is to protect alleged exclusive possession over the suit property. It is also undisputed fact that persons against whom the appellants are seeking injunction are co-sharer in the suit property. If that be so, the result of grant of injunction would oust co-sharers from the suit property. The learned appellate Court has rejected the application on the said ground. Therefore, there no perversity in the impugned order. The appeal is, therefore, dismissed.

JUDGE

Wagh