

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

WRIT PETITION 964 OF 2020

Vilas s/o.Damodar Kuchewar,
aged about 60 yrs, Occ. Service,
r/o. Plot No. 54, Gandhi Nagar,
Nagpur – 440010

....**PETITIONER**

VERSUS

1. Vijay s/o.Damodar Kuchewar,
aged about 68 yrs, Occ. Nil,
r/o. Plot no. 11, Aniruddha Bunglow,
Poddar Layout,
Tahsil & District Wardha
2. Sanjay s/o. Damodar Kuchewar,
aged about 66 yrs, Occ. Retired,
r/o. Plot No. 54, Gandhi Nagar,
Nagpur 10
3. Ajay s/o. Damodar Kuchewar,
aged about 63 yrs, Occ. Retired,
r/o. Plot No. 54, Gandhi Nagar,
Nagpur 10

.... **RESPONDENTS**

Mr. A.P. Wachasundar, counsel for the petitioner.
Mr. N.A. Gade, counsel for respondent 1.
Mr. J. Ingley, counsel for respondent 2.
Ms. Dipali Kolhe, counsel for respondent 3.

CORAM : ROHIT B. DEO, J.
DATED : 19th APRIL, 2022

ORAL JUDGMENT :

The challenge is to the order dated 30.1.2020, rendered by
11th Joint Civil Judge, Senior Division, Nagpur, in Special Civil Suit

696/2017, brought by the respondent 1, seeking declaration, possession and injunction on the premise that the plaintiff is the owner of the suit property by virtue of Will dated 13.9.2001, executed by late Mrs. Radhika Damodar Kuchewar.

2. The petitioner is one of the sons of Mrs. Radhika Damodar Kuchewar and is the defendant 3 in the suit.

3. The learned trial Judge framed issues vide order dated 4.12.2019, and issue 3, reads thus:

3] Whether the defendant No. 3 is trespasser and he has no right, title, interest in the property?

The defendant 3 objected to issue 3 contending that the question of he being a trespasser does not arise at all and such an issue could not have been framed since there is no assertion of a material which is denied as would give rise to the issue.

4. Having heard the learned counsel for the respective parties, I am inclined to partially agree with the submission of the learned counsel Mr. A.P. Wachasundar. The brothers are residing in the property owned by their mother and it is the case of the plaintiff that he has become exclusive owner of the suit property and that defendant 3

has no right to reside in the suit property. If the said contention is accepted by the learned trial Judge, the possession of the defendant 3 shall be deemed illegal. However, that would not suggest that the defendant 3 was a trespasser.

5. I am inclined to partially modify issue 3.

6. The words “trespasser and he” in issue 3 are wholly unnecessary and shall stand deleted.

7. The learned trial Judge shall modify issue 3, accordingly.

8. The petition is partly allowed.

9. The learned trial Judge is requested to expedite the suit.

JUDGE

belkhede