

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

SECOND APPEAL NO. 275 OF 2022

Mrs. Bhagiratha W/o. Santoshji Gaurkar and ors.

...VERSUS...

Shri Rupchand S/o. Kundalik Kadu and ors.

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

Court's or Judge's order

Shri Shrikant A. Dutonde, Advocate for appellants.

Dr. Rakesh I. Agrawal, Advocate for respondent nos. 1, 2 & 4 to 7.

CORAM : SMT. M. S. JAWALKAR,J.

DATE : 10th August, 2022.

Heard.

2. **Admit** on the following substantial questions of law:-

I) Whether the co-defendant can file an application under order VIII, Rule 6-C of the Civil Procedure Code, 1908 for exclusion of counter claim, when as per order VIII, Rule 6-C of C.P.C., only plaintiff can file the application for exclusion of counter claim ?

II) Whether the counter claim is maintainable ?

III) Whether the separate suit for partition, separate possession and cancellation of sale deed on behalf of the appellants is maintainable, when the suit for partition, separate possession and cancellation of sale deed between the same parties, for the same properties and for the same relief is pending before the competent Court of law ?

IV) Whether the learned appellate Court committed serious error of law by ignoring record and submitted that the counter claim is barred by limitation. Specifically, the property

was self acquired property and till date, no partition is effected?

V) Whether mere verification of Revenue Record to ascertain title of a person by itself is sufficient for declaring respondent no. 7 as a bonafide purchaser?"

3. In my considered opinion, this matter needs to be referred to mediation. The learned counsel appearing for both parties to seek instructions and inform this Court.

4. Stand over to 20/08/2022.

CIVIL APPLICATION (CAS) NO. 777 OF 2022

Heard.

2 The present application is filed for grant of temporary injunction against the respondents/non-applicants, as the appeal is admitted on substantial questions of law.

3. It is submitted by the learned counsel appearing for the appellants/applicants that the respondents/non-applicants are likely to change the nature of suit land and therefore, they may be restrained from effecting any change in the physical appearance of the suit land as well as from creating any third party interest in the suit property.

4. For the reasons stated above, the application is allowed.

5. The respondents/non-applicants are hereby restrained from changing nature of suit property and also restrained from creating any third party interest in the suit property.

6. Accordingly, the application is disposed of.

(Smt. M.S. Jawalkar, J.)