

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

WRIT PETITION NO.164 OF 2022

Shaileshkumar Jethalalbhai Chawda
Aged 57 years, Occ: Business,
R/o Sardar Patel Colony, Railtoli,
Gondia, Tah. & Dist. Gondia. **PETITIONER**

...V E R S U S...

- 1] Praful Jethalalbhai Chawda
Aged about 63 years,
Occ: Business, R/o Railtoli,
Gondia, Tah. & Dist. Gondia.
- 2] Zaverbhai Jethalalbhai Chawda
Aged about 59 years,
Occ: Business, R/o Railtoli,
Gondia, Tah. & Dist. Gondia.
- 3] Ashwin Jethalalbhai Chawda
Aged about 56 years,
Occ: Business, R/o Railtoli,
Gondia, Tah. & Dist. Gondia.
- 4] Rajesh Jethalalbhai Chawda
Aged about 51 years,
Occ: Business, R/o Railtoli,
Gondia, Tah. & Dist. Gondia. **RESPONDENTS**

Mr. Nandesh S. Deshpande, Advocate for Petitioner.
None for Respondents.

CORAM: **ROHIT B. DEO, J.**
DATE: **12th JANUARY, 2022.**

ORAL JUDGMENT:

The petitioner has suffered a decree of eviction in Special Civil Suit 93/2011 instituted by his brothers – the respondents herein.

2. Briefly stated, the trial court accepted the contention of the plaintiff that by virtue of gift-deed duly registered executed by their father late Jethalalbhai, the plaintiffs are the absolute owners of the suit property, and the defendant who is running a pipe factory on the suit property, is liable to vacate and handover the possession. The contention in defence that the suit property is ancestral property, and therefore, could not have been bequeathed in entirety, is held disproved.

3. The plaintiff preferred Regular Civil Appeal 7/2019, and simultaneously preferred an application under Order 41, Rule 5 of the Civil Procedure Code seeking stay to the decree of possession. While the appellate court did grant stay of possession, the defendant is directed to deposit Rs.25,000/- (Rupees Twenty Five Thousand) per month in the court, as a condition.

4. The defendant is aggrieved by the condition imposed.

5. Mr. Nandesh Deshpande would submit that there was no material on record for the appellate court to come to the conclusion which it did. Mr. Nandesh Deshpande would submit that the only material before the appellate court was the government valuation of Rs.2,38,42,000/- (Rupees Two Crores Thirty Eight Lakhs and Forty Two Thousand) and that there was no material to suggest that the defendant was earning any particular amount or income from the factory on the suit property.

6. I have perused the reasons recorded by the appellate court, and having done so, I find no error as would warrant interference in writ jurisdiction.

7. The plaintiff is litigating since 2011. It is not in dispute that the defendant is in possession of the suit property and is using the same for a commercial purpose. The market valuation is Rs.2,38,42,000/- (Rupees Two Crores Thirty Eight Lakhs and Forty Two Thousand). While the defendant is indeed entitled to stay of possession, I find nothing wrong in the condition imposed, which is deposit of Rs.25,000/- (Rupees Twenty Five Thousand) per month in the court with a further direction that the amount deposited shall be adjusted against the mesne profit, if the

defendant ultimately fails in the appeal.

8. The learned Judge of the appellate court has relied on the decisions of the Hon'ble Supreme Court in *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. (2005) 1 SCC 705* and *Rajaram Prasad Gupta and another v. Ramchandra Prasad and others (2008) 10 SCC 796*. The reliance is apt.

9. The petition is sans substance, and is dismissed.

JUDGE

NSN