

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

CIVIL REVISION APPLICATION NO. 63 OF 2021

1. Gajanan Namdeo Patil, Age 35 Yrs,
Occu. Business
2. Smt. Kavita Pravin Patil, age 38 yrs,
Occu. Business, Both R/o Patil
House, Trisharan Chowk, Old
Babulkheda Road, Ajni, Nagpur.

.... **APPELLANTS**

// VERSUS //

1. Dinesh Haribhau Dable, Age 33 yrs.,
Occu. Business, R/o Rambagh,
Nagpur.
2. Aftab Khan Bunde Khan, Age 31 Yrs,
Occu. Private R/o Near Ambedkar
Statue, Bhankheda, Mominpura,
Nagpur.
3. Mukesh Suresh Lihitkar, Age 35 Yrs,
Occu. Private R/o Plot No. 51, Near
Buddha Vihar Vishwakarma Nagar
Road No. 6, Parvati Nagar, Nagpur.

.... **RESPONDENTS**

Shri Tarun Parmar, Advocate for the appellant.

Shri Mohd. Aadil Sheikh, Advocate for the respondent nos. 1 to 3.

CORAM : ROHIT B. DEO, J.
DATED : 21.03.2022

ORAL JUDGMENT :

Heard. **ADMIT.** With consent the Revision Application is finally heard.

2. The Defendants have suffered a decree of possession in Regular

Civil Suit 1106 of 2017, which is instituted by the respondents/plaintiffs under Section 6 of the Specific Relief Act, 1963 ('the Act'). Perusal of the judgment reveals that irrefutably, the plaintiffs are the owners of the property having purchased the same by the registered sale-deed dated 17.05.2017 executed by the brother of the defendants. According to the plaintiffs, the subject property fell to the share of their vendor in the partition dated 19.09.2009. According to the plaintiffs, contemporaneously with the execution of the sale-deed, the plaintiffs were placed in possession. However, the plaintiffs were forcibly dispossessed within the period of six months preceding to the institution of the suit by the defendant 2 Smt. Kavita Patil, who erected a temporary construction.

3. The plaintiffs examined two witnesses, who have vouched for the fact that the plaintiffs were placed in possession, and were dispossessed. The witnesses of the plaintiffs were not cross-examined. The defendants did not step into the witness box. In the result, the learned Trial Judge accepted, and rightly so, the unchallenged version of the plaintiffs and decreed the suit.

4. Several assertions are made for the first time in the High Court, which I am not inclined to consider since the entire case of the plaintiffs has gone virtually unchallenged in the Trial Court. The applicants/defendants are free for instituting such appropriate substantive proceedings, as may be permissible in law, to establish their case that as of fact, there was no partition at all and that the vendor of the plaintiffs could not have

transferred title.

5. Subject to the aforesaid observations, the Civil Revision Application is dismissed.

(ROHIT B. DEO, J.)

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