

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

WRIT PETITION NO.2473 OF 2018

(DINKAR MAHADEORAO MAHATPURE....VS.. VINAYAK RAMRAO MAHATPURE)

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

Court's or Judge's orders

Shri J.C.Shukla, Advocate for Petitioner.
Ms Smita P. Deshpande, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 09, 2023.

1. Heard.
2. The order dated 11/01/2018, passed below Exh.10 by Second Additional Judge, Small Causes Court, Nagpur rejecting the application filed under Section 10 of the Code of Civil Procedure (C.P.C.) to stay the proceedings in Regular Civil Suit No.93 of 2017, which came to be rejected on the ground that it does not comply with the requirement of Section 10 of the C.P.C. as the suit which was earlier filed was for partition, whereas, the present suit, which is sought to be stayed, is for eviction, is under challenge in this writ petition.
3. The learned counsel for the petitioner submits that he is claiming partition in the earlier Suit i.e. Special Civil Suit No.605 of 2014 and as the ownership of the plaintiff is denied in the present matter and the issues are same therefore, Section 10 of C.P.C. will come in picture.

4. After going through the reasons recorded by the learned trial Court and considering the fact that the earlier suit is for partition and present suit is for eviction and only because in the present suit for eviction title is denied, it cannot be said that the matter in issue in the present suit is also directly and substantially in issue in the previously instituted suit between the parties.

5. In the circumstances, I do not find any perversity or illegality in the order passed by the trial Court.

Accordingly, the writ petition is **dismissed**. No order as to costs.

JUDGE

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