

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

WRIT PETITION NO.2647 OF 2022

(JIYALAL KISANLAL MACCHIRKE....VS.. SURAJLAL KISANLAL MACCHIRKE & OTH.)

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

Court's or Judge's orders

Shri Prashant Gode, Advocate for Petitioner.

CORAM : ANIL S. KILOR, J.
DATED : JANUARY 17, 2023.

1. Heard.
2. In this writ petition, the petitioner has raised a question to the legality and correctness of the judgment and order dated 14/11/2019 passed by the learned Principal District Judge, Gondia in Misc. Civil Appeal No. 44 of 2016, allowing the appeal and thereby setting aside the order below Exh.5 passed by Joint Civil Judge Junior Division, Amgaon dated 09/09/2016, allowing the application Exh.5.
3. Admittedly, the plaintiff and the defendants are the co-owners and co-sharers of the property in dispute and the Will, on the basis of which the plaintiff is claiming title over the suit property, is not yet proved.
4. The Hon'ble Supreme Court of India in the case of *Shkhahari Parwatrao Karahale ..vs.. Bhimashankar Parwatrao Karahale*, reported in (2002) 9 SCC 608, has observed that even in the case of exclusive possession of

the joint family property by one of the co-owners would be the possession on behalf of all the members and therefore, the injunction cannot be granted to one co-sharer against other co-sharers.

5. The learned counsel for the petitioner has relied upon the judgment in the case of *Baburao and Ors...vs..Tukaram and Ors.*, reported in **MANU/MH/0324/2014** and judgment in the case of *Laxmikant Diliprao Garje ..vs.. Shrikant Diliprao Garje*, reported in **MANU/MH/2480/2020**.

6. As far as submission of the learned counsel for the petitioner that the defendants in their written statement, more particularly in paragraph No.30, have admitted the extent of the possession of the plaintiff and the defendants on the suit property. It is submitted that therefore, to the extent the defendants admitted the possession of the plaintiff the injunction be granted.

7. In the light of the said submission, the application Exh.5, filed before the learned trial Court is perused, however, no such pleading or any such prayer was made before the trial Court and in absence of such pleading or prayer before the trial Court, at this stage the same cannot be considered. In the circumstances, as the petitioner is claiming injunction against the co-sharer, I am not inclined to entertain the present petition.

8. The judgments cited by the petitioner are distinguishable on facts and therefore, of no help to the petitioner.

The Writ Petition is therefore, **dismissed**. No order as to costs.

8. The petitioner is at liberty to move a fresh application for grant of temporary injunction in view of the written statement filed by the defendants, if he so desire.

JUDGE

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