



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

WRIT PETITION NO. 93 OF 2024

1. Nivrutti S/o. Jagobaji Bhosale,
(Deceased) Through LRs.:

1(a) Smt. Meera Wd/o.Nivrutti
Bhosale, Aged 75 yrs., Occu.:
Household.

1(b) Sudhir S/o. Nivrutti Bhosale,
Aged 44 yrs. Occu.: Business,

1(c) Mrs. Sunita D/o. Nivrutti Bhosale,
Aged 43 yrs. Occu.: Household,

1(d) Sunil S/o. Nivrutti Bhosale,
Aged 42 yrs. Occu.: Business,
Prop. M/s. Sunil Sweet Mart,
Beside House of Sitaram Agnihotri,
Gittikhadan Chowk, Katol Road,
Nagpur.

.... **PETITIONERS.**

// VERSUS //

Sitaram S/o. Ramjivanprasad Agnihotri,
aged about 71 yrs., Occu.: Business,
R/o. Gitti Khadan Chowk, Katol Road,
Nagpur.

.... **RESPONDENT.**

Shri J.J.Chandurkar, Advocate for Petitioners.
Shri Sudhir Malode, Advocate for Respondent.

CORAM : **ANIL S. KILOR, J.**
DATED : **JANUARY 19, 2024**

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. The application Exh.68 raising objection to the execution of the decree passed in Regular Civil Suit No. 176 of 2009 on 31/03/2015 moved by the petitioners before the executing Court in Small Causes Darkhast No.92 of 2015 came to be rejected by the impugned order dated 11/03/2023, which is under challenge in the writ petition.
4. It is the case of the petitioners that the suit property, as described in Schedule-A, shows that the suit property is a tenanted premises admeasuring 18 x 9 feet, whereas, she is in possession of 469.52 Sq.Ft. area as per the Court Commissioner's Report. Thus, according to him, they are in possession of more than the area stated in Schedule-A.
5. Shri Chandurkar, learned counsel for the petitioners further points out that the decree was passed on 31/03/2015 and thereby the petitioners were directed to handover the peaceful possession of the suit

premises as described in Schedule-A of the plaint. He, therefore, submits that rejection of his objection is erroneous.

6. The learned counsel for the petitioners further states that the petitioners undertake to handover possession of the suit premises, as described in Schedule-A i.e. the area 18 x 9 feet, to the respondent/plaintiff.

7. Shri Malode, learned counsel for the respondent/Decree Holder opposes the present petition and submits that the petitioners are not in possession of the area more than mentioned in Schedule-A of the plaint.

8. Be that as it may, the record shows that in Schedule-A the suit premises is shown admeasuring 18 x 9 feet, whereas the report submitted by the Divisional Officer of the Nagpur Improvement Trust, on carrying out the spot inspection, shows that the petitioners are in possession of 469.52 Sq.Ft. of the land i.e. portion A and B shown in the map annexed along with the report.

9. Thus, in the above referred circumstances, the undertaking of the petitioners is accepted. The petitioners shall hand over the possession as per the decree to the respondent within two weeks from today. Failure to handover the possession would amount to breach undertaking given to this Court.

10. As far as submission of the learned counsel for the respondent that the petitioners are not in possession of more than the area mentioned in the Schedule-A of the plaint is concerned, the respondent is at liberty to get the said issue determined in an appropriate proceeding if he so desires. Accordingly, I pass the following order:

- i) The Writ Petition is allowed.
- ii) The impugned order dated 11/12/2023 passed below Exhs. 68 and 74 by the Judge, Small Causes Court, Nagpur in Special Darkhast No.94 of 2015 is hereby quashed and set aside.
- iii) The petitioners shall hand over the possession as per the decree to the respondent within two weeks from today. Failure to handover the possession would amount to breach undertaking given to this Court.

Rule is made absolute in the above terms. No order as to costs.

(ANIL S. KILOR, J)

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