



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

WRIT PETITION NO.3786 OF 2024
(Santosh Mukundlal Agrawal .vs. Kishor Mukundlal Agrawal and others)

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. P.A. Deshpande, Advocate for Petitioner,
Mr. M.G. Sarda, Advocate for Respondent No.1,
Ms. Prachi Joshi, AGP for Respondent No.3 and 4.

CORAM : N.R. BORKAR, J.
DATE : 13/08/2024.

. This petition takes exception to the order dated 18.03.2024 passed by the learned Civil Judge, Senior Division, Akola below Exh.97 and Exh.98 in Regular Civil Suit No.136/2017.

2. The respondent nos.1 and 2 herein have filed a suit against the petitioner with the following prayers :

(i) A Decree for declaring that after the death of late Shri Mukundlal, the plaintiff no.1 exclusively received the tenancy rights in the suit shop and the defendant no.1 did not have any right to use and occupy the suit shop.

(ii) For permanent injunction restraining the defendant no.1 from running any business in the shop described in para no.1 of the plaint.

(iii) For permanent injunction against the defendant nos.2 and 3 restraining them from renewal of F. L. III license no.12 in the name of Hotel Cheers without deciding the entitlement of the defendant no.1 to run the business in the suit premises.

(iv) For mandatory injunction directing the defendant no.1 and anybody claiming through him to remove all belongings in the suit premises.

(v) For money decree directing the defendant no.1 to pay Rs.93,800/- to the plaintiff along with interest on the said amount @ 15% p.a. from the date of suit till actual realization of the amount.

(vi) Cost of the present suit may kindly be awarded to the plaintiff.

(vii) Grant any other relief which this Hon'ble Court deems fit in the interest of justice.

3. On the basis of the pleadings of the parties, the following issue was framed :

Whether defendant no.1 proves that he got tenancy right in a suit shop through Will executed by Mukundlal Agrawal.?

4. At the instance of the petitioner, by order dated 09.09.2019, the above said issue was deleted.

5. By the order passed below Exh.97, the trial court directed the present petitioner to produce on record Will dated 03.03.2016 executed by Mukundlal Agrawal and Will dated 08.11.2017 executed by Sneha Agrawal. The learned counsel for the petitioner, on instructions, submits that the petitioner is not going to rely upon the said Wills dated 03.03.2016 and 08.11.2017 executed by Mukundlal Agrawal and Shena Agrawal, respectively in support of his case. In that view of the matter, the impugned order passed below Exh.97 is quashed and set aside.

6. By the order passed below Exh.98, the trial court has permitted respondent nos.1 and 2 to examine scribe and Sub-Registrar in respect of another Will of Mukundlal Agrawal dated 14.08.2015. Considering the facts and circumstances of the case, I am not inclined to interfere with the order impugned passed below Exh.98. However, it would be open to the petitioner to take exception to the said order in the appeal, if such eventuality arises.

7. The petition is disposed of in the above terms.

(N.R. BORKAR, J.)