



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

CIVIL REVISION APPLICATION NO.19 OF 2025

APPLICANT

The Suprerior Drinks Pvt. Ltd.,
Through its Authorised Representative-
Anoop Agrawal, Having its Godown
At Plot No.35, 29(29-a), M.I.D.C.
Hingna, Nagpur

..VERSUS..

NON-APPLICANT

- 1) Devendra Kumar Srivastava,
Aged about 65 years, Occ. Service,
- 2) Smt. Pushpa W/o Devendra Kumar
Srivastava, Aged about 61 years, Occ.
Private
Both R/o, P.O. Box 2975, Meridian, MS
39302, United State of America

Mr. D. R. Khapre a/w. Mr. V. A. Lohiya, Advocates for Applicant.
Mr. S. A. Mohta, Advocate for the Respondent for Respondent No. 1 and 2.

CORAM : ROHIT W. JOSHI, J.

DATE : 17.10.2025

ORAL JUDGMENT :

- 1) Heard.

2) The present non-applicants are the original plaintiffs. The applicant is the original defendant. The parties will be referred as “plaintiffs” and “defendant” hereinafter.

3) The plaintiffs filed a suit for eviction and possession against the defendant. The foundation of the suit is compromise decree dated 17.07.2009, passed by the learned 4th Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No.596 of 2005. The said civil suit was filed by the plaintiffs against one Mahendrapratap Shrivastav (father of plaintiff No.2) and Mahendrapratap Shrivastav, who were partners in a partnership firm named M/s. Pratap Steel Rolling Mills. The said suit filed for recovery of money in which a compromise decree was passed on 17.07.2009. Clauses 6 and 7 of the compromise decree read as under:-

“6] The defendants with prior written consent of the plaintiffs will transfer or agree to transfer, assign, sell or deal with the property or part thereof described in the schedule herein under. Any agreement of the sale transfer deed, assignment or any document in respect of the property executed by the defendants shall be deemed to be void and

shall be deemed to have not created in any right, title or interest in the property in favour of any person in whose favour it is executed by the defendants.”

7] Any dealing or arrangement of transfer or agreement without written consent o the plaintiffs or without the plaintiff No.2 signing as co-owner shall be deemed to be null and void and no right, title and interest shall pass on the perspective purchaser or any other person. The amount of sale consideration etc. shall be made known to the plaintiffs and whatever amount received from the prospective purchaser shall be first paid to the plaintiffs.

4) Based on the said decree, the present plaintiffs filed a suit for eviction against the present defendant, who is in occupation of the suit property as a tenant. The said suit came to be registered as Special Civil Suit No.1272 of 2023.

5) Perusal of the plaint will indicate that admittedly late Mahendra Pratap Shrivastav was survived by other legal heirs, however, based on the aforesaid compromise decree the present plaintiffs are claiming exclusive ownership over the suit property. In such circumstances, an application for

rejection of plaint was filed by the defendant claiming that the suit is not maintainable since all the legal heirs of late Mahendra Pratap Shrivastav, the erstwhile owner, were not parties to the suit and the suit was not filed seeking eviction and possession for and on behalf of all the co-owners, but the plaintiffs were claiming to be exclusive owners of the suit property. It was also contended that the compromise decree does not entitle the plaintiffs to file a suit for eviction.

6) The learned Advocate for the defendant/present applicant has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *Kanakarathammal Vs. Loga Natha Mudaliar*, reported in *AIR 1965, SC 270*, to contend that a suit by co-owner against the tress-passer or tenant may be maintainable without impleading the other co-owners, if the suit is filed for and on behalf of all the tenants, however, if the suit is filed claiming title adverse to the other co-owners, the other co-owners will have to be necessarily arrayed as defendants in the suit. It is contended that suit by co-owner claiming an absolute right over the property to the exclusion of other co-owners is not maintainable.

7) It is apparent that the compromise decree does not confer title on the plaintiffs. Perusal of the plaint averments will further demonstrate that relief of possession is sought contending that the plaintiffs are exclusive owners of the suit property.

8) In view of the legal position as settled in the aforesaid judgment of the Supreme Court, in the considered opinion of this Court, the suit filed by the plaintiffs is not maintainable. Consequently, plaint in Special Civil Suit No.1272 of 2023 filed by the present plaintiffs against the defendant is liable to be rejected.

9) In view of the above, the civil revision application is allowed in the following terms.

I. The order dated 26.09.2024, passed by the learned Civil Judge, Senior Division, Nagpur on application at Exh.9 in Special Civil Suit No.1272 of 2023, is quashed and set aside.

II. The said application at Exh.9 in Special Civil Suit No. 1272 of 2023 is allowed and plaint in Special Civil Suit No. 1272 of 2023 is rejected.

III) The rejection of plaint will not come in way of the present Non-applicant No.2 in prosecuting Regular Civil Suit No.201 of 2025, which is a suit for eviction filed by her alongwith other co-owners.

(ROHIT W. JOSHI, J.)

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