



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

WRIT PETITION NO.3816/2023

Manmohan s/o Gopilal Sawal and another
...Versus...

Smt. Kamlabai wd/o Shamrao Lakhe Deceased : Through her Legal Heirs
Smt. Meena Vinayakrao Bhandarkar and others

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

Court's or Judge's orders

Mr. J.M. Gandhi, Advocate for petitioners
Mr. R.I. Agrawal, Advocate for respondent Nos.2 (A to C) and 3

CORAM : ROHIT W. JOSHI, J.
DATE : 10/12/2025

1. Heard.
2. **ADMIT**.
3. Admittedly, half portion of the suit premises is purchased by the petitioners/tenants from the daughters and sisters of respondent Nos.1 and 2 respectively.
4. Perusal of prayer clause in the plaint will demonstrate that the petitioners/landlords had prayed for decree of eviction only with respect to half share of the tenanted premises. A clear and categorical admission has come in the cross-examination of the respondent No.2, who has entered the witness box on behalf of the landlords that the suit property is not partitioned *inter se* between the respondent Nos.1 and 2 and the other co-owners, who have sold the suit shop to the petitioners/tenants. Although reliance is placed on the judgment of the Hon'ble Supreme Court in the matter of

Pramod Kumar Jaiswal and others Vs. Bibi Husn Bano and others, reported in *(2005) 5 SCC 492*, ratio of the said judgment may not be applicable to the facts of the present case, where landlord has demanded possession of half undivided share of the tenanted premises. *Prima facie*, the learned Small Causes Court does not have the jurisdiction to pass a decree for partition and eviction. Apart from this, the decree appears to be unsustainable on the ground of construction without permission, since elaborate pleading in that regard is not made and only evidence that has come on record indicates that a wooden partition was removed and shutters of doors have been changed. As regards the arrears of rent, the landlords may have a good case on merits. It is also well settled that even if one ground for eviction is made out, decree for eviction can be passed. However, the landlords have prayed for possession only of half of tenanted premises, as it is apparent from the plaint averments, where sale of half of undivided share in the tenant premises is admitted, prayer for eviction and possession of remaining half share is made.

5. In that view of the matter, in the considered opinion of this Court, the petitioners have made out a *prima facie* case for grant of stay. The execution of the impugned decree for eviction is stayed till final disposal of the petition, subject to condition that the petitioners/tenants shall continue to deposit sum of Rs.10,000/- (Rupees Ten Thousand Only) per month with this Court. In the event of default of depositing the amount, as directed, for three consecutive months, interim order shall stand vacated without reference to Court.

CIVIL APPLICATION (W) NO.795/2025

In view of the aforesaid order passed in Writ
Petition, Civil Application is disposed of.

(ROHIT W. JOSHI, J.)

Wadkar