



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

WRIT PETITION NO.7776/2022

- PETITIONERS** :
1. Milind Manohar Pinjarkar,
Age about 54 years, Occ. – Business.
 2. Smt. Bhagyashree w/o Milind Pinjarkar,
Aged about 22 years, Occ. Student.

All R/o of Flat No.2, Plot No.A-16, “Shiv Shrushti” Apartment, Mouza Bhamti, Swavalambi Nagar, Nagpur.

...VERSUS...

- RESPONDENTS** :
1. Late Mangala w/o Manoharrao Pinjarkar
Through her legal heir.

1-a) Smt. Sushma w/o Dilip Sherekar,
Age about 56 years, Occ. Housewife,
R/o Near St. Thomas Mar Thoma Serian
Church, 2, Chapel Lane, Navin Nagar,
Wilindon, Santacruz (W) Mumbai -400054.

1-b) Smt. Namita wd/o Nitin Pinjarkar,
Age about 46 years, Occ. Housewife.

1-c) Ms. Unnati d/o Nitin Pinjarkar,
Age about 46 years Occ – Service.

1-d) Ms. Vaibhavi d/o Nitin Pinjarkar,
Age about 19, Occ- Student.

1-b) to 1-d) R/o. Shivsagar
Apartment, Khare Town, Dharampeth,
Nagpur.

1-e) ShriAshish s/o Manohar Pinjarkar
Age about 45 years, Occ – Business
R/o A/3/3 NSK Society, Temple Road,
Ravinagar, Civil Lines, Nagpur – 440001.

1-f) Shri Vishwas s/o Manohar Pinjarkar
Age about 43 years, Occ – Business
R/o Tiera Apartment, Airori, Thane, Mumbai.

2. Manoharrao s/o Mahadeorao Pinjarkar
Aged about 94 years, Occ : Retired
R/o C/o Ashish Pinjarkar (1-e), A/3/3
NSK Society, Temple Road, Ravi Nagar,
Civil Ines, Nagpur – 440001.

Added R. No.2 as party vide Court's order
Dt. 28/2/24 and 6/3/24)

(Amendment as per Court's order
Dated 28-2-2024)

Mr. Amit A. Choube, Advocate for petitioners
Mr. A.M. Gedam, Advocate for respondents

CORAM : SACHIN S. DESHMUKH, J.
DATE : 28/07/2025

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned Counsel for parties, at the state of admission.

2. The petitioner is the original defendant No.1 in Regular Civil Suit No.697/2019 presented by the parents, seeking declaration and permanent injunction. So far as the suit property purchased by the litigating sides in the year 1992 by way of registered documents, wherein the petitioner is one of the joint purchasers. The status of the petitioner as joint purchaser is undisputed.

2. The suit premises are utilized used for running a hostel, including the basement hall of the suit property was leased to one academy. In that regard an agreement is executed between the petitioner and the operator of the said academy on 01/10/2017. While asserting the claim, the respondents presented an application under Order XXXIX Rule 1 of the Code of Civil Procedure so also the petitioners also put forth a similar prayer with an assertion that the petitioners are operating the basement hall in the suit building, as such, prayed for necessary orders of injunction.

3. The trial Court after considering the rival contentions put forth by the litigating sides has granted an order of injunction against the petitioners, ignoring the status of the petitioner as a joint purchaser by way of registered document in that regard. While raising challenge the Misc. Civil Appeal was presented, wherein the first appellate Court modified the order observing that there cannot be an order of injunction against the registered joint owner. As such, it set aside the order of injunction which was granted by the trial Court and modified the same by granting injunction against the present petitioner from obstructing and interfering the respondents from day-to-day transaction of business of the ladies hostel with order of forbearance from collecting the charges of rooms of hostel from girl students and rent of basement hall

and providing new admission to the girl students in the suit premises. Aggrieved by the same, the petitioners have approached this Court.

4. The learned Counsel for the petitioners submits that the Courts below have completely ignored the fact that there could not be an order of injunction against the joint owner and the fact that the petitioner has executed an agreement in relation to the basement hall of the suit premises sufficiently establishes that it was the petitioner who was in charge of the basement premises in relation to which the lease agreement was executed. In support of the same, learned Counsel for the petitioners has placed heavy reliance on the judgment of the Hon'ble Apex Court in the case of *T. Ramalingeswara Rao (Dead) Through Legal Representatives and another Vs. N. Madhava Rao and others (2019) 4 SCC 608*, wherein the Hon'ble Apex Court has held that there cannot be injunction against the joint owner since the possession of one co-sharer is possession of all co-sharers, as such, it cannot be adverse to the other co-sharer, unless there is a denial of their right to their knowledge by the person in possession and exclusion and ouster following thereon for the statutory period.

5. Per contra, learned Counsel for the respondents has supported the order of the Courts below by submitting that the petitioner was never ever in charge of the suit premises and it was only the respondents who were looking after the admission in girls' hostel

and the basement hall in relation to which lease agreement was executed in favour of one academy. Even the licence stands in the name of the respondents.

6. Having heard the respective Counsel for the litigating sides, it is a matter of record that the petitioner is one of the co-sharers of the suit premises, as such, there cannot be injunction against the co-owner. Pertinently the petitioners have placed on record the agreement executed in relation to the basement premises, wherein possession of the petitioner is evident. Nevertheless the documents in the shape of electricity bills standing in the name of the academy using basement premises, coupled with the payment of taxes including the water tax is in the name of the petitioner. Although the first Appellate Court has recorded the contentions in paragraph 38 of the order, however, no reasons are assigned while ignoring the same. Resultantly, the order which is rendered by the first Appellate Court forbearing the present petitioners from collecting the rent of basement hall can be conveniently regarded as rendered in ignorance of entitlement being co-owner for want of any contra evidence to that effect. As such, the intervention of this Court in such a situation is rather warranted.

7. Therefore, the order rendered by the first Appellate court stands modified and the petitioners are permitted to collect the rent of basement hall. Clause (III) is modified to the aforesaid extent, which

would facilitate the petitioners to collect the rent of basement hall from the academy. Needless to state that rest of the order rendered in M.C.A. No.171/2019 is maintained. As such, the writ petition is partly allowed. Rule is made absolute in the aforesaid terms. No order as to costs.

(SACHIN S. DESHMUKH, J.)