

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

**WRIT PETITION NO.2574/2015**

**Ramesh Madhukarrao Ambadkar**  
**...Versus...**  
**Sau. Baby Bhaskar Darokar and others**

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

Ms I.P. Khisti, Advocate for petitioner  
Shri N.A. Gawande, Advocate for respondent nos.1 and 2

**CORAM : SMT. VASANTI A NAIK, J.**  
**DATE : 06.09.2016**

By this writ petition, the petitioner challenges the orders of the trial and the appellate Court, dated 15.5.2014 and 4.10.2014 respectively, rejecting the prayer made by the petitioner for grant of temporary injunction, restraining the respondents from alienating the suit property and disturbing the possession of the petitioner over the same.

The petitioner is the original plaintiff and the respondents are the original defendants. The petitioner's mother and the respondent are real sisters and the daughter of Ganpat and Yashodi. It is the case of the plaintiff - petitioner that one of the three field properties, that is the subject matter of the suit, was exclusively owned by Yashodi and therefore, Ganpat could not have executed the Will, dated 19.11.1986 in respect of the said property. The registered Will, dated 19.11.1986 is challenged

by the petitioner in the civil suit filed by the petitioner in the year 2013. Along with the civil suit, an application was filed by the petitioner for temporary injunction, restraining the respondents – defendants from alienating the suit properties and disturbing the possession of the petitioner on the same. The application filed by the petitioner was dismissed by the trial Court by the order dated, 15.5.2014. The petitioner challenged the said order before the first appellate Court. The appeal filed by the petitioner was dismissed by the judgment, dated 4.10.2014. The petitioner has challenged both the orders in this writ petition.

On hearing the learned Counsel for the parties and on a perusal of the impugned orders, it appears that there is no scope for interference with the same in the exercise of the writ jurisdiction. The Courts held that the petitioner did not have a *prima facie* case and the balance of convenience was also not in favour of the petitioner. The Courts found that the respondent, the daughter of Ganpat and Yashodi was residing with him till his death in the year 1987. The Courts recorded a *prima facie* finding of fact that the petitioner was not in possession of the suit properties and the respondents were in possession of the same. It was found that the respondents had made the construction of a house on plot no.773 and 858 for the residence. The Courts found that though Ganpat had expired on 7.8.1987, the suit was filed in the year 2013. Further, the respondents – defendants had clearly pleaded in paragraph 11 of the written statement that the suit property was in the exclusive possession of the defendants and they were not interested in creating any third party interest in the same. The Courts rightly held that in the circumstances of the

case, irreparable loss could not have been caused to the plaintiff - petitioner, if the application filed by the plaintiff - petitioner was dismissed. The observations made by both the Courts appear to be just and proper and the view expressed by the Courts is a possible view. There is no scope for interference with the impugned orders, in exercise of the writ jurisdiction.

Hence, the writ petition stands dismissed with no order as to costs.

**JUDGE**

Wadkar

**C E R T I F I C A T E**

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