

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

WRIT PETITION NO.6677 OF 2015

RAVINDRA PANDHARI BHOYAR
vs
SMT. VARSHA MAROTI ASUTKAR & OTHERS

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

Court's or Judge's orders

Shri R. D. Murkute, Advocate for the petitioners.

CORAM : A.S. CHANDURKAR, J.
DATED : JULY 11, 2016.

The petitioners who are the defendants in a suit for partition and separate possession filed by the respondents are aggrieved by the order passed by the appellate Court allowing the miscellaneous appeal filed by the respondent and restraining the petitioners from alienating the suit property or creating third party rights therein.

The respondents have filed Regular Civil Suit No.95/2014 for partition and separate possession of the land bearing Survey no.127, area 2.48 H.R. It is the case of the respondents that the aforesaid property is a joint family property. In the written statement filed by the petitioners, it has been stated on the basis of a Will executed in their favour, the aforesaid property was bequeathed in favour of the petitioners. On that basis they claimed right to alienate the same. The trial Court rejected the application for temporary injunction. The appellate Court, however, allowed the miscellaneous appeal on the ground that the entitlement on

the basis of aforesaid Will was yet to be established by the defendants.

Having heard the learned Counsel for the petitioners, I do not find that the appellate Court committed any error in restraining the petitioners from alienating the suit property. It is an admitted position that the petitioners are claiming to be the owners of the suit property on the basis of Will executed by Vitthu. Though mutation entries have been taken in favour of the petitioners, the same would not entitle them to alienate the suit property unless their title is established. Hence, the appellate Court did not commit any error in granting temporary injunction in favour of the respondents.

By observing that the trial Court shall decide the suit on its own merits without being influenced by the observations made in the impugned order, the writ petition is dismissed with no order as to costs.

In the facts of the case, the proceedings in Regular Civil Suit no.95 of 2014 are expedited and the same shall be decided by the end of April, 2017.

JUDGE

/MULEY/