

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1881 OF 2017

Smita Santosh Patil	... Petitioner
Vs.	
Namdev Vetu Sanap & anr.	... Respondents

Mr.R.S. Datar for the Petitioner

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 24, 2017**

P.C. :

1. Not on Board. Upon mentioning, taken on Board.
2. In this petition, the order dated 2.3.2016 passed by the learned District Judge II, Mangaon, Raigad in Civil Appeal No.14 of 2008, is hereby challenged. The learned Counsel for the petitioner submits that his application filed under Order 1 Rule 10 was filed for impleading the present petitioner as a party respondent in the said Appeal. He submitted that the suit No.63 of 1993 was decreed on 30.1.2003 and thereafter, the appeal was preferred by the judgment debtor i.e., the respondent / Namdev Sanap. During the pendency of the appeal, gat No.101 was sold to her by Namdev Sanap on 27.12.2013. He submits that due to the Prevention of Fragmentation and Consolidation of Holdings Act,

1947, different survey numbers were given to the lands and according to the petitioner/applicant, the property which was purchased i.e., gat No.101 is different than the suit property bearing gat No.88. However, she has apprehension that the said property gat no.101 is wrongly included in gat No.88 and, therefore, she is a necessary party and, therefore, her application ought to have been allowed.

3. Perused the impugned order. The learned Judge has held that no nexus is shown by the petitioner between gat Nos.88 and 101. The plaintiff and the defendants are fighting for their rights in respect of the suit land in appeal. If the petitioner has become owner and is in possession of gat No.101 pending appeal and she has any apprehension in respect of the merging her land in the suit land, then her right to sue in respect of her land accrues separately. She can independently seek easementary or possessory rights to protect her land. Hence, the impugned order cannot be faulted with.

4. Writ Petition is, therefore, rejected.

(MRIDULA BHATKAR, J.)