

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

WRIT PETITION NO.3718/2017

Kisan S/o Namdeo Kathole and another
..Vs..
Smt. Sharda Wd/o Kondu Kathole and another

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

Court's or Judge's orders

Shri S.G. Joshi, Adv. for the petitioner.

CORAM : S.C. GUPTE, J.

DATE : 7.8.2017.

Heard learned counsel for the petitioner.

This petition challenges an order passed by the District Court at Mehkar in an application under Section 8 of the Hindu Minority and Guardianship Act for grant of permission to sell the property. The respondent No.1, who is a widow of one Kodnu Kothale, was an applicant (applicant No.1) before the District Court seeking permission to sell agricultural land standing in the name of herself and her minor children, who were applicant Nos.2 and 3 before the District Court. Applicant No.2 is a minor son while applicant No.3 is a minor daughter of applicant No.1. Non-applicants 1 and 2, who are petitioners before this Court, are parents in law of applicant No.1. There was one more non-applicant before the District Court, namely, brother of non-applicant No.1. Kondu, the

deceased husband of applicant No.1, was son of non-applicant No.1. Under a memorandum of partition effected between non-applicant No.1 and three sons including Kondu, the agricultural land which is the subject matter of the petition under Section 8 of the Act, was allotted to Kondu. After Kondu's death the names of the applicants were mutated in the revenue record. The applicants are owners and possessors of the land. It is the case of the applicants that after the demise of Kondu non-applicant Nos.1 to 3 started harassing and threatening the applicants and as a result applicant No.1 had to take shelter at the house of her brother at a nearby village. She, however, continued to cultivate the subject land with the help of her brother. It is the case of the applicants that the non-applicants illegally entered the subject land while applicant No.1 was working there and obstructed the agricultural operations extending even threats of assault. The matter was reported to the police and thereafter a civil suit was filed for confirmation of her possession and a perpetual injunction against the non-applicants. A temporary injunction was issued by the Court of Civil Judge, Junior Division, Mehkar in that suit and the order was confirmed by the District Court at Buldhana. It was case the applicants before the trial Court that applicant No.1 had no other source of income than the subject land to maintain applicant Nos.2 and 3. It was her case that it was not possible for her to cultivate the land due to obstructions caused by the non-applicants and as a result

she proposed to sell the land so as to enable her to purchase another land at village Hiwara-Sable where she was residing with her brother. The District Court considered the aspect of *bona fide* need of the applicants to sell the subject land. The Court found that the position emerging on record was that the applicants, who were owners and possessors of the subject land, were residing at another village and that there was obstruction in cultivation of the subject land on the part of the non-applicants. The Court, in the premises, found that it was highly probable that the land would be rendered fallow owing to difficulties in cultivation and that in the facts and circumstances of the case, the applicants have proved the necessity of selling the land.

The reasons of the District Court in arriving at these conclusions are *germane* to the controversy before the Court and cogent. The record of the case before the District Court did disclose that there was an obstruction at the hands of the non-applicants. In so far as the possession of applicant No.1 of the subject land was concerned, she even had filed a suit and sought an interlocutory injunction; the matter was carried by the non-applicants but the injunction was confirmed by the appeal Court. It is also a matter of fact and not disputed by the non-applicants that the applicants did not reside in the same village where the suit land is situated. Considering the fact that the suit land is an agricultural land and its cultivation was being obstructed by the non-applicants, and applicant No.1 who had no source of

income besides through cultivation of the land, and accordingly, had proposed to sell the subject land to enable her to purchase land at village Hiwara-Sable where she was residing with her brother, the conclusion of the District Court that the applicants had proved the necessity of selling the suit land and that purchase of another land at village Hiwara-Sabble from the amount received through sale of the suit land would be more advantageous to the minor, cannot be faulted with. The District Court after considering the market value of the suit land based on valuation certificate issued by the Sub-Registrar of Assurances at Mehkar directed the applicant No.1 not to sell the land below the price of Rs.4,00,000/-. There is no infirmity in the impugned order. The writ petition is accordingly **dismissed**.

JUDGE