

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD***

939. WRIT PETITION No. 10197 of 2018

Smt. Vijaymala W/o Balwantrao Dharmadhikari
and others

.... Petitioners

Versus

Ambadasrao Naharrao Dharmadhikari and others ... Respondents

Mr. S.S. Deshmukh, Advocate for petitioners

Mr. H.H. Padalkar, Advocate for respondents No. 1 and 2

Mr. D.J. Choudhari, Advocate for respondent No.3

Coram : N.M. Jamdar, J.

Date : 27 November 2018.

ORAL ORDER :

1. Heard the learned Counsel for the parties.
2. The petitioners have challenged the concurrent judgment and orders passed by the learned Civil Judge (Junior Division), Naigaon, and the learned District Judge-1, Biloli, rejecting his application for temporary injunction.
3. The petitioners have filed the suit for partition and

separate possession and for declaration that the decree passed in Regular Civil Suit No. 87 of 1988 is void. The petitioners have also sought an injunction restraining the respondents from alienating the suit property and from creating third party rights.

4. Both the Courts have considered the case of the petitioners based on the alleged partition, reduced into writing of the year 1986. The Courts have found that there were changes in the numbers and the properties were converted into different numbers. After analysing this position, both the Courts have held that the Gat No. 56 to the extent of area specified therein, which was part and parcel of old Survey No. 2/B was not fraudulently transferred and due to the conversion and certification, changed the identity. The learned District Judge also held that as regards Gat No. 55, the petitioners failed to prove their prima-facie case that they have any right, title or interest. In the circumstances, both the Courts did not find any prima facie case in favour of the petitioners that the suit property was not partitioned.

5. Furthermore, the defendants No. 1 and 2 have given an undertaking that they would not dispose of Gat No. 56 till the decision of the suit. It is not necessary to give any direction to deposit the sale proceeds in bank as prayed for by the plaintiffs.

6. There is no error in exercise of discretion by both the Courts in rejecting the injunction having found no prima-facie case in favour of the petitioners.

7. The writ petition is accordingly rejected.

N.M. Jamdar, J.