

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

**916 CIVIL APPLICATION NO.7672 OF 2019**

IN WP/13830/2018 WITH CA/7674/2019 IN WP/13830/2018

PRAKASH VITHOBA BHOIRKAR  
VERSUS  
JAYASHREE DATTA MAGAR AND ORS

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Mr. M.S.Kulkarni, Mr. S.S.Deshmukh, Advocate for Applicants.

Mr. S.S.Deshmukh, Advocate for Petitioner in WP.

Ms. Sudha Kulthe, Advocate for Respondent Nos.1 & 2.

Mr. K.B.Jadhavar, AGP for Respondent-State.

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**CORAM : S.V. GANGAPURWALA AND  
MANGESH S. PATIL, JJ.**

**DATE : 19.07.2019**

**PER COURT :-**

1. Mr. Kulkarni, the learned counsel submits that the objection of the original Writ Petitioner under Section 3H(4) of the National Highways Act is already rejected. Nothing survives in the present Writ Petition. The Original Writ Petitioner has also filed a Civil Suit for the relief of partition, separate possession and declaration, that the sale deed executed in favour of the applicant on 27.04.1989 is void, even application for injunction is rejected. The Special Civil Suit bears No.19 of 2015.

2. We have also heard Mr. Deshmukh, the learned counsel. Mr. Deshmukh, the learned counsel for the original Writ Petitioner submits that under Section 3H(4), the competent authority cannot take a decision with regard to the title. If such a dispute with regard to title arises, the competent authority has to refer the dispute to the Principal Court of original civil jurisdiction. The learned counsel submits that the order of the competent authority *per se* is erroneous.

3. It appears that the petitioner of the writ petition has filed a substantive suit for partition and declaration of the sale deed executed in favour of the civil applicant. The matter is already subjudiced before the civil court. In view of that, there was no point in referring the dispute again to the civil court. The order passed by the competent authority would not bind the civil Court where the Special Civil Suit No.19 of 2015 filed by the present writ petitioner is pending. The judgment of the civil court in Special Civil Suit No.19 of 2015 filed by the original writ petitioner would prevail over the order of the competent authority under Section 3H(4). The original writ petitioner is entitled to take such steps as may be permissible in the Special Civil Suit No.19 of 2015.

4. With these observations, the Writ Petition and the Civil Applications are disposed of.

**(MANGESH S. PATIL, J.)**

**(S.V. GANGAPURWALA, J.)**

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