

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.7370 OF 2017

Runda w/o Balu Balki, Agriculturist, Tah. Wani, Dist. Yavatmal

-vs-

Maroti s/o Wasudeo Rajurkar and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. S. Dhengale, Advocate for petitioner.

CORAM : A.S.CHANDURKAR, J.

DATE : April 02, 2019

The respondents are duly served with the notice issued by this Court. They have not chosen to oppose the writ petition.

2. The petitioner is the original plaintiff who has filed suit for partition, separate possession and other ancillary reliefs. The suit property in question is field Gat No.2 admeasuring 1H 43 R as well as field Gat No.205/2 admeasuring 2H 66R. It is the case of the plaintiff that she is the daughter of defendant Nos.1 and 2 and the defendant Nos.3 and 4 are her brothers. According to the petitioner on 22/02/2016 the defendant Nos. to 4 sold field Gat No.2 to the defendant Nos.5 and 6. Hence the plaintiff claiming right in the said property filed the suit in question. Along with the suit an application for temporary

injunction seeking to restrain the defendants from alienating both the suit properties came to be filed. This application was opposed by the defendants. The trial Court by its order dated 06/05/2017 restrained the defendant Nos.1 to 4 from creating third party rights in field Gat No.205/2. In view of the fact that Gat No.2 was already sold off no orders were passed in that regard. The appellate Court in the miscellaneous appeal filed by the plaintiff directed copy of the sale-deed dated 22/02/2016 to be kept at the office of Registrar during pendency of the suit. As no relief has been granted in respect of the property at Gat No.2 the plaintiff has filed the present writ petition.

3. Shri S. S. Dhengale, learned counsel for the petitioner submitted that the Court erred in proceeding on the basis that the alienation was for legal necessity by the defendant No.1 in favour of defendant Nos.5 and 6. According to him the same was a matter of evidence and the plaintiff could not be deprived of her rights if she ultimately succeeds in the suit. It was not necessary for the Court to have gone into the nature of transaction by the defendant Nos.1 to 4 in favour of defendant Nos.5 and 6 at this interim stage. According to him any

further alienation would definitely prejudice the case of the plaintiff.

4. On perusing the impugned order it is seen that in so far as land bearing Gat No.205/2, the defendant Nos.2 to 4 have been restrained from creating any third party rights during pendency of the suit. Land bearing Gat No.2 was however alienated on 22/02/2016 prior to filing of the suit. The same has been sold to defendant Nos.5 and 6 for valuation consideration. In view of the fact that this transaction has taken place prior to filing of the suit and the said property is shown to be initially belonging to defendant No.1, by observing that any further alienation of field Gat No.2 or any part thereof by the defendant Nos.5 and 6 would be subject to the principle of *lis pendens* and thus binding on any subsequent transferee, the writ petition is disposed of. The proceedings in the suit are expedited and the same shall be decided on its own merits and in accordance with law.

No order as to costs.

JUDGE