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

CIVIL APPLICATION (CAS) NO.191/2020

IN

SECOND APPEAL NO.323/2018

S.L. Thakur (dead) through LR's. Sameer Shyamsundarsing Thakur and others,

-VS-

Bhalchandra s/o Prabhakar Wadai.

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

Court's or Judge's Orders

Shri D.R. Bhoyar, Advocate for appellants.
Shri A.S. Shukla, Advocate for respondent.

CORAM : S.M. MODAK, J.

DATE : AUGUST 23, 2021.

Heard learned Advocate for the appellants/plaintiffs and learned Advocate for the respondent/defendant. There is a dispute in between class II heirs of the deceased Gangadularibai on one hand and beneficiaries of the will executed by her on the other hand. The plaintiffs have filed a suit thereby challenging the will-deed dated 15/03/1980 executed by the testator. She has bequeathed the suit property to the father of the defendant. Said father was a care taker of the testator. The suit property is an agricultural land.

2. The revenue authorities have mutated the suit land in favour the the defendant as per the order dated 13/03/2004. In the suit, apart from grounds, the correctness of the said order is also challenged by the other plaintiffs.

3. The plaintiffs examined witnesses sold to defendants. The plaintiffs could not find a favour from the Trial Court. He

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also lost before the First Appellate Court and hence the present appeal.

4. This Court has admitted the appeal by framing following substantial question of law on 02/07/2018 –

“Whether all the suspicious circumstances surrounding the execution of the Will dated 15/03/1980 have been considered before holding the same to be valid?”

5. During the pendency of this appeal, plaintiffs apprehend that on the basis of his name appearing on 7/12 extract and on the basis of the possession, there is likelihood that he will sell away the suit property. It is strongly denied on behalf of the respondent on the ground that there is no material in support of the said apprehension. It is also submitted that the appellant can very well take the benefit of the principle of lis pendens laid down as per Section 52 of the Transfer of Property Act.

6. It is true that there are no particulars about the apprehension in the application. It is also true that if one person has to deprive the another person of the rights in the property, he would not do so openly. At the same time, before granting discretionary relief, a plaintiff/appellant must put before the Court certain grounds on which apprehension is founded, it is not there. Hence, I am not inclined to grant discretionary relief in favour the the appellant. It is disposed of. Suffice to say that the applicant is at liberty to take the benefit of lis pendens as contemplated under Section 52 of the Transfer of Property Act. It is very well true that eventhough the statute contains such

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principle, still Court can grant injunction. However, there has to be certain materials. It is not there hence, application is rejected. The appellant is at liberty to move the Court in future, if he has got apprehension and on the basis of supporting materials. With these observations the application is disposed of.

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The matter is fixed for final hearing on **20/09/2021**.

JUDGE

R.S. Sahare