

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

WRIT PETITION NO. 5329/2019

Suman w/o Hirasingh Rathod,
aged about 48 years, Occ. Agriculturist,
r/o Shanti Niketan Nagar, Buldhana,
Tq. Dist. Buldhana.

.....PETITIONER

...VERSUS...

1. The State of Maharashtra through
Collector, Collector Office, Buldhana,
Tq. Dist. Buldhana.
2. Sub-Divisional Officer, Buldhana,
S.D.O. Buldhana, Tq. Dist. Buldhana.
3. The Tahsildar, Tahsil Office, Chikhli,
Tq. Chikhli, Dist. Buldhana.
4. Sanju s/o Mansingh Mandwe,
aged about 66 years, Occ. Agriculturist,
r/o Dongarkhandala, Tq. Dist. Buldhana.
5. Raysing s/o Mangu Rathod,
aged about 61 years, Occ. Agriculturist,
r/o Dongarkhandala, Tq. Dist. Buldhana.
6. Madhukar s/o Sakharam Lokhande,
aged about 56 years, Occ. Agriculturist,
r/o Dongarkhandala, Tq. Dist. Buldhana. **...RESPONDENTS**

Mr. N. B. Kalwaghe, Advocate for petitioner.
Mrs. M. A. Barabdhe, A.G.P. for respondent nos. 1 to 3.
Mr. A. A. Naik, Advocate for respondent no.4.

CORAM:- V. M. DESHPANDE, J.
DATED :- 05.04.2021.

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for parties. Heard Mr. Kalwaghe, learned counsel for petitioner, Mrs. Barabdhe, learned A.G.P. for respondent nos.1 to 3 and Mr. Naik, learned counsel for respondent no.4. Nobody appears for respondent nos. 5 and 6 though served. They are formal parties *qua* the present petition.

2. Petitioner is original plaintiff. She filed a suit for declaration that order passed in M.C.A.5/Dongarshevli/15/2016-17, by original defendant no.3 i.e. Tahsildar and also sought injunction. Along with suit, an application for temporary injunction was also filed (Exh.-5). Suit is contested by respondent no.4 so also an application for injunction. After detailed hearing, learned 2nd Jt. Civil Judge Senior Division, Buldhana vide order dated 06.08.2018 was pleased to allow application under Order XXXIX Rules 1 and 2 filed of the Code of Civil Procedure on behalf of the petitioner/plaintiff thereby granting injunction as under:

“2. Defendant No.1 to 4 are hereby restricted from creating way from the property belonging to plaintiff (more particularly described in para 2 of this application) til the decision of the suit.”

3. Against the said, present respondent no.4 filed Misc. Civil Appeal No.13/2018 and the learned Principal District Judge, Buldhana on 10.07.2019 allowed the appeal. Against the said, the present writ petition is filed.

4. This writ petition has come up for admission on 01.08.2019 and on the said day, while issuing notice to the respondents, interim order was granted in favour of the present petitioner, as per prayer clauses (d) and (e) of this writ petition.

5. During the hearing, it is pointed out to this Court that the suit filed on behalf of the petitioner is still pending and the exercise of pleadings is already over. Issues are also framed and the suit is pending for recording of the evidence of the parties.

6. Since this writ petition arises out of injunction application and when the suit is pending for recording evidence, in my view, any observation made in this writ petition will certainly cause prejudice to both the parties, especially when stay is operating in favour of the plaintiff/petitioner from 01.08.2019. Therefore, in my view, interest of justice can be secured by

directing the trial Court to decide Regular Civil Suit No. 107/2018 within a period of six months from today. Consequently, I pass the following order.

ORDER

- (i) The writ petition is disposed of.
- (ii) Learned 2nd Jt. Civil Judge Senior Division, Buldhana, on whose file Regular Civil Suit No.107/2018 is pending, shall decide the same within a period of six months from today by giving opportunity of hearing to the parties to the said suit.
- (iii) Parties to said suit shall extend full cooperation to the learned Judge for deciding the suit within time set by this Court.
- (iv) Till the suit is decided, interim order passed by this Court on 01.08.2019 shall remain in operation.

Rule accordingly. No order as to costs.

JUDGE

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