

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

WRIT PETITION NO. 3089 OF 2022

Shri Pragji Devram Chavhan

vs.

Shri Arjunsingh s/o Iakhansingh Chandel and others

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

Court's or Judge's Orders.

Mr. N. S. Warulkar, Advocate for petitioner.
Mr. A. S. Dhore, Advocate for respondent No.1.
Ms. S. S. Jachak, AGP for respondent Nos.8 and 9.

CORAM : MANISH PITALE J.

DATE : 08/07/2022

By this petition, the petitioner i.e. original plaintiff has challenged judgment and order dated 06/05/2022 passed by the District Court, whereby an appeal filed by the respondents i.e. original defendants has been allowed and an order passed by the Court of Civil Judge Senior Division, Chandrapur (trial Court) granting temporary injunction in favour of the petitioner has been set aside.

2. The petitioner herein has filed a suit for declaration, cancellation of will and mandatory and permanent injunction. It is the case of the petitioner that the subject property including sawmill could not have been willed away and that the relief sought in

the suit deserved to be granted. In the said suit, an application was moved for grant of temporary injunction, inter alia for restraining the original defendant No.1 from running a sawmill, alternatively, it was prayed that direction be issued to the original defendant No.9 i.e. the State through Deputy Conservator of Forest to allow the petitioner to operate the sawmill in question.

3. Upon considering the contentions of the rival parties, the trial Court held that the petitioner had made out a *prima facie* case in his favour and accordingly, effect of the will deed in question was stayed till the decision of the suit and the original defendant No.9 was directed to restrain the original defendant No.1 from running the disputed sawmill till the decision of the suit.

4. Upon an appeal preferred before the District Court, the impugned order was passed whereby the order of the trial Court was set aside and the application for grant of temporary injunction was rejected.

5. This Court issued notice in the present writ petition. Mr.Warulkar learned counsel appearing for the petitioner brought to the notice of this Court

that upon the impugned judgment and order being passed, the private respondents had acted in haste and demolished the structure in which the sawmill and machinery was existing and that the nature of the property was sought to be changed.

6. In response, Mr.Dhore, learned counsel appearing for the respondent Nos.1 to 6 i.e. the contesting respondents submitted that the structure in question had already collapsed, being in dilapidated condition and that as on today the said respondents had constructed a shed which was sufficiently protecting the machinery of the sawmill. Apart from this, it was contended that the appellate Court had reached *prima facie* finding in favour of the said respondents on the basis of the material on record and it was found that since the year 2001-2002, the sawmill was being run by the original defendant No.2. It was submitted that the trial Court had erred in granting the application for temporary injunction and that the appeal was allowed on a proper appreciation of the material on record. It was further submitted that as on today, the evidence of the petitioner i.e. the original plaintiff was already over and that of the defendant No.1 was also completed and that to address the apprehension expressed on behalf of the petitioner, appropriate

directions could be given for expediting the proceedings before the trial Court.

7. This Court has considered the material on record, the *prima facie* finding rendered by the appellate Court is based on the material available on record and considering the stage of the proceedings before the trial Court, this Court is of the opinion that if appropriate directions are given for expeditious disposal of the suit itself, it would serve the ends of justice.

8. In view of the above, the writ petition is disposed of without interfering with the impugned order.

9. The original defendants are directed to give a list of witnesses that they wish to examine, within two weeks before the trial Court.

10. It is further directed that the trial Court shall expedite the proceedings in the pending suit and dispose of the same expeditiously, in any case by **15th November, 2022.**

JUDGE

Digitally signed byRAVIKANT
CHANDRAKANT KOLHE
Signing Date:12.07.2022
17:58