

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

WRIT PETITION NO.1594 OF 2018

- PETITIONERS :-**
1. Sou. Vatsalabai Govindrao Madke, aged about 63 years, Occ.Household, R/o Milind Nagar, Nagpur.
 2. Sou. Shardabai Krushnaji Borkar (deceased) through her legal heirs
 - 2-i Nitu Manish Bondhate, Aged 42 years, Occup. Service, R/o.Flat No. 103 Shantikunj Apartment, Near Vikas Hospital, Mehrauli, South Delhi.
 - 2-ii Suchita Vinod Meshram, Age 40 years, Occup.Service, R/o Rani Bhosle Nagar, Umred Road, Nagpur.
 - 2-iii Moni Krishnarao Borkar, Age 39 years, Occup.Household R/o.LLG, Quarter No.15/9, Vaishali Nagar, Nagpur-2
 - 2-iv Dolly Krishnarao Borkar, Age 38 years, Occup. Household R/o.L.I.G Quarter No.15/09, Vaishali Nagar, Nagpur.
 - 2-v Harshal Krishnarao Borkar, Age 33 years, Occup.Private R/o L.I.G Quarter No.15/09, Vaishali Nagar, Nagpur.
 - 2-vi Snehal Krishnarao Borkar, Age 33 years, Occup. Private,R/o

L.I.G. Quarter No.15/09, Vaishali Nagar, Nagpur.

3. Sou. Saritabi Ravikant Gaikwad, aged 44 years, Occ. Household, R/o. Gittikhadan, Katol Road, Nagpur.
4. Ku. Latabai Narayan Patil, Aged 38 years, Occ. Household, R/o. Bangali Panja, Nagpur
5. Ku. Sangitabai Narayan Patil, aged about 35 years, Occ. Household, R/o. Bangali Panja Nagpur.

Nos. 1 to 5 through Power of attorney holder Shri Sukumar Natraj Belekar, Aged 48 years, Occ. Private, R/o Lashkaribagh, Circle No.15/21, Kamal Chowk, Nagpur

...VERSUS...

RESPONDENTS :-

1. Tarachand Ramaji Pantawane, Aged about 56 years, Occ. Agriculture, R/o. Sugat Nagar, Nagpur.
2. Smt. Sonam wd/o Atul Pantawane, aged 25 years, Occ. Household.
3. Shri Sumit Hemraj Pantawane, aged 28 years, Occ. Agriculturist,
4. Ku. Aarti Hemraj Pantawane, Aged 31 years, Occ. Agriculturist

5. Smt. Lilabai wd/o Hemraj
Pantawane, aged 51 years, Occ.
Agriculturist,

Nos. 2 to 5 R/o. Narshala, Tahsil
and District Nagpur.
6. Vikas Pandurangji Kharalkar,
Aged 33 years, Occ. Private
7. Mohan Pandurangji Kharalkar,
aged about 41 years, Occ. Private
Nos. 6 and 7 R/o 14,
Punyadham Mandir, Hudkeshwar,
Road, Nagpur

Mr.H.N.Potbhare, counsel for the petitioners.
Mr.S.PKshirsagar, counsel for respondent No.1.

CORAM : MRS.VRUSHALI V. JOSHI, J.

DATED : 24 /02/2023

J U D G M E N T:-

(1) Heard Mr. H.N.Potbhare, learned counsel for the petitioners, Mr.S.P. Kshirsagar, learned counsel for respondent No.1.

(2) **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

(3) The petitioners (ori.plaintiffs) have challenged the order passed by the learned District Judge, Nagpur in MCA No.106 of 2015. The petitioners (ori.plaintiffs) in this petition have filed the Civil Suit against the respondents (ori. defendants) for declaration and partition of the suit property along with the application for temporary injunction. The respondent (ori. defendant) Nos.6 and 7 have purchased the suit property from the respondent (ori. defendant) Nos.1 to 5. The learned trial Court has rejected the application for temporary injunction, therefore, the petitioners (ori.plaintiffs) have filed the appeal before Appellate Court and the Appellate Court has also dismissed the appeal confirming the order passed by the trial Court.

(4) Being aggrieved by the said judgment, the petitioners (ori.plaintiffs) have filed this writ petition. The petitioners (ori.plaintiffs) are the coparceners of Ramaji Devaji Pantawane, who died on 30.01.1993 leaving behind the petitioners (ori.plaintiffs) and respondent (ori. Defendant) No.1. Ramaji Devaji Pantawane was owner and in possession of the suit property, the agricultural land admesuring 2.46 HR situated at mouza Narsala, Gat No.88, PH.No.37, Tah. and Dist. Nagpur. As per the petitioners (ori.plaintiffs), said property is their ancestral

property and being coparceners, the petitioners (ori.plaintiffs) have 1/12th share in the said property. It is the grievance of the petitioners (ori.plaintiffs) that the respondent (ori. defendant) Nos.1 to 5 without the consent of petitioners (ori.plaintiffs) have alienated the suit property in favour of the respondent (ori. defendant) Nos. 6 and 7, without giving any share to them. The respondent (ori. Defendant) No.1 got recorded the revenue entries in his name and after executing the sale deed of said land the name of (ori. Defendant) Nos.6 and 7 were mutated on the revenue record.

(5) Respondent (ori. defendant) Nos.6 and 7 have further alienated the suit property and sold the same in favour of other several persons and as such, have infringed the right of petitioners (ori.plaintiffs) in the suit property. As the respondent (ori. defendant) Nos. 6 and 7 have alienated the property to number of persons, the temporary injunction has prayed against the respondent (ori. defendant) Nos. 6 and 7.

(6) The respondent (ori. defendant) Nos.1,3 and 5 have filed their written statement and stated that they have sold it to respondent (ori. defendant) Nos. 6 and 7 out of legal necessity.

One Atul Pantawane was suffering from cancer, as the funds for medical treatment were required and therefore, with the consent of all the petitioners (ori.plaintiffs) and respondents (ori. defendants), they sold the property to respondent (ori. defendant) Nos.6 and 7. Said Atul Pantawane died and after his death, remaining sale consideration was decreed amongst the other legal heirs and amount of Rs.2,50,000/- was given to Tarachand by Sanjay Govindrao Madke on 10.07.2011 for the share of his mother Vatsalabai Govindrao Madke. Hence, prayed to reject the application.

(7) Respondent (ori. defendant) Nos. 6 and 7 have carved out plots and sold it to different persons. They have also resisted the prayer stating that they are businessman and dealing in development of the immovable property. They have purchased the suit property on 14.06.2011 and have sold out 47 plots to the respective purchasers. The impugned entries of the said purchasers are already recorded in the office of N.M.C. They are not concerned with the petitioners (ori.plaintiffs), even names of petitioners (ori.plaintiffs) were not recorded in the revenue record. Hence, prayed to reject the appeal.

(8) After considering the arguments averred by all the parties, the learned Appellate Court dismissed the appeal. It is argued by the learned counsel for the petitioners that the petitioners (ori.plaintiffs) and the co-owners of the suit property have their undivided share in the said property. Without any lawful authority, the respondent (ori. defendant) Nos. 1 to 5 have alienated the said property to respondent (ori. defendant) Nos. 6 and 7 and respondent (ori. defendant) Nos.6 and 7 have alienated it to number of persons. Though the respondent (ori. defendant) Nos.6 and 7 have stated that the sale deeds are executed for all the plots. The sale deed is not yet executed. The agreement to sale is executed by respondent (ori. defendant) Nos.6 and 7 and to avoid further multiplicity of the litigations, it is necessary to restrain the respondent (ori. defendant) Nos.6 and 7 from alienating the property, as the share of petitioners (ori. plaintiffs) is not demarcated. It will cause irreparable loss to the petitioners.

(9) After going through the documents filed on record, it appears that after demise of Atul Pantawane, the share of Vatsalabai was given to Tarachand i.e. son of petitioner No.1, who is the respondent (ori. defendant) No.1. The petitioners (ori. plaintiffs) and the respondents (ori. defendants) are not in

possession of the suit property. Their names are not on 7/12 extract/revenue record. Therefore, the trial Court has rightly observed that the question of considering the prayer for grant of temporary injunction against any of the respondents (ori. defendants) in the said contentions does not apparently fall within the ambit of section 37 and 38 of the Specific Relief Act. 47 plots were already sold by respondent (ori. defendant) Nos. 6 and 7 and they are not the party in the present suit.

(10) The learned counsel appearing for respondent No.1 has placed reliance on the judgment in the case of **Sobha Developers Ltd. Vs. Lanka Sitaram Kamthe and ors** reported in 2014(3) Mh.L.J.445, in which the Hon'ble Apex Court has held as under:-

“Civil Procedure Code, O.39,R.1:-
Temporary injunction -non-grant of-
considerations- suit filed in 2013 by plaintiff
claiming share in family property-injunction
sought against defendants from alienating and
creating third party interest- Agreement for
development of property already entered and
development of property also started -right of
third party already created-. Balance of
convenience tilts in favour of developer and
defendants-no irreparable loss going to be caused
if injunction is not granted- Development of
property cannot be stopped at belated stage-
Injunction as granted by Court below is wrong-
No question of any restraintment order against

defendant from alienating and/or creating third party right or interest in property”.

The learned counsel appearing for respondent No.1 has also placed reliance on the judgment in the case of and in the case of **Mandabai Ashokrao Tingne and anr Vs. Mohammad Muntajim Md.Jainuddin Mullaji and ors** reported in **2012(2) Mh.L.J. 866**, in which the Hon’ble Apex Court has held as under:-

“Civil Procedure Code, O.39,R.1 (a)- Temporary injunction- Suit for injunction- Plaintiff stated that defendant has purchased the suit property, which is an ancestral property- Defendant would be entering into the shoes of the coparceners from whom he has purchased the suit property- In that capacity he would be the defendant in the suit for partition and separate possession- In a suit for partition and separate possession, all the defendants are the plaintiffs- Hence the provision of Order 39 Rule 1(a) of the Civil Procedure Code is not at all attracted”.

(11) The suit property was alienated by respondent (ori. defendant) Nos.1 to 5 in favour of respondent (ori. defendant) Nos. 6 and 7. There is no dispute that the revenue entries are recorded only on the fiscal purpose and the same does not confer any legal rights, however, the impugned entries in the name of 47 plots owners are claimed to have been recorded. Though, the petitioners (ori.plaintiffs) have filed the affidavit of one Sanjay Govindrao Madke, considering that by receiving bribe of Rs.

5,000/-, he has executed receipt in favour of the maternal uncle-Tarachand for the sum of Rs. 2,50,000/-. Said affidavit will be considered at the time of trial as suit property is already alienated and the respective shares of the petitioners (ori.plaintiffs) are sought in which it will have to be established in the course of trial on merits.

(12) In the above said view, interference of this Court is not required. Hence the writ petition stands dismissed.

(13) Rule is discharged accordingly.

JUDGE