

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

Writ Petition (WP) No. 4045 of 2018

Vitthal Rukmini Sansthan, Pandharpur through its Executive Officer At
Pandharpur, Dist. Solapur

Versus

Mahadeo S/o Yadav Bhagat and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.R.Patil, Advocate for the petitioner.

Shri Ajay Tote, Advocate for the respondent no.1.

CORAM : ANIL S. KILOR, J.

DATED : 7th AUGUST, 2023.

Heard.

2. The application filed by the Deosthan for staying the suit came to be rejected, vide impugned order dated 15th September, 2017, passed by the 2nd Joint Civil Judge, Darwah in Regular Civil Suit No. 8 of 2005, is the subject matter of this writ petition.

3. Shri Patil, learned counsel for the petitioner Deosthan submits that the land in question is owned by the Deosthan. However, one Radhabai was a tenant, who was in possession of the suit property.

4. It is submitted that after the death of Radhabai, her three sons filed a suit for partition in which the Deosthan was not party and the said suit was decreed.

5. Accordingly, Tehsildar issued notices to the concerned parties including the petitioner Deosthan as in the revenue record, the name of Deosthan appears as owner of the land.

6. It is submitted that because of the objection raised by the petitioner, the partition could not take place. Subsequent to the same the Regular Civil Suit No. 8 of 2005 was filed amongst the legal heirs of the plaintiff and the defendant in the earlier suit, seeking permanent injunction.

7. The petitioner Deosthan filed an application in the said proceeding for staying the suit in view of the certain directions issued by the Principal Bench of this Court in PIL No. 36 of 2014.

8. In the above referred backdrop, a specific question was put to the learned counsel Shri Patil whether the Deosthan has raised any challenge to the decree for partition passed in the year 1988, after receiving the notice from the Tehsildar. The answer was in negative which shows that the said decree holding that three sons of Radhabai are the owners of the suit

land and they are entitled for partition, is still in force and has attained the finality.

7. It is submitted that the subsequent to the said decree a certificate was issued under Section 129(b) of Maharashtra Public Trust Act, 1950 in respect of all the properties of Deosthan including the suit property.

8. The said contention will not give any right to the Deosthan to approach and file any application for staying the proceeding of Regular Civil Suit No. 8 of 2005, in absence of any judicial order setting aside the decree passed in the year 1988 in favour of the three sons of Radhabai in a suit for partition.

9. In the circumstances, I do not find any illegality or perversity committed by the learned trial Court in rejecting the said application. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]

Digitally signed
by
SACHIDANAND
KUTTAN NAIR
Date:
2023.08.08
10:25:12 +0530