

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

Writ Petition (WP) No. 3671 of 2022

Krushna S/o Tanba Kinnake

Versus

Kantabai Damduji Madavi

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

Court's or Judge's Order

Shri S.P.Kshirsagar, Advocate for the petitioner.

CORAM : ANIL S. KILOR, J.

DATED : 13th APRIL, 2023.

Heard.

2. The judgment and order dated 28th February, 2022, passed by the District Judge-1, Hinganghat in Misc. Civil Appeal No. 10 of 2021, dismissing the appeal and confirming the order passed by the learned 3rd Joint Civil Judge, Senior Division, Hinganghat, in Regular Civil Suit No. 72 of 2020, below Exhibit 5, dated 17th February, 2021, dismissing the application Exhibit 5 for temporary injunction, is under challenge in this petition.

3. Shri Kshirsagar, learned counsel for the petitioner submits that, the defendant/respondent who is the daughter of third wife of original owner and as

such she has no right, title or interest in the suit property. He submits that the suit property was given in possession of the respondent for certain period and when it was claimed back by the petitioner, the respondent has claimed share in the suit property. He, therefore, submits that the suit for permanent injunction was filed along with application Exhibit 5 which came to be rejected by the trial Court and against the same an appeal was preferred and which also came to be dismissed vide impugned order. It is submitted that both the Courts below have failed to consider that the respondent cannot claim title, right or share in the suit property. It is submitted that this Court in a case of Bhikabai Sukhadeo Giram Vs. Mamtabai Vithoba Ingle and others¹ has held that two or more widows succeeding as heirs, on the death of one of the two widows, the sole surviving widow would succeed to the entire property by survivorship. Daughter of predeceased third wife not being heir not entitled to any share. He, therefore, submits that both the Courts below and not considering the law in this regard. He, therefore, prays for quashing and setting aside the impugned judgment and order.

4. None for the respondent, though served.

1 2000(1) Mh.L.J 815

5. In the light of submissions made by the learned counsel for the petitioner, I have perused the record and the impugned judgment and order.

6. There is no dispute as regards the law laid down by this Court in *Bhikabai Sukhadeo Giram Vs. Mamtabai Vithoba Ingle and others* (supra). However, the suit is pending, wherein an adjudication, the above referred question would be decided.

7. In the present matter, the limited question is whether both the Courts below have rightly rejected the application preferred by the petitioner for grant of temporary injunction ?

8. It is the case of the plaintiff that he handed over the possession of the suit property to the defendant. However, there is no *prima facie* evidence to show that subsequently the respondent handed over of the possession back to the plaintiff. Thus, having considered the findings recorded by both the learned Courts below, I do not find any error committed by the learned Courts below in rejecting the application Exhibit 5.

9. As such, I do not find any reason to interfere with the impugned judgment and order in the present writ petition. Accordingly, it is dismissed.

10. At this stage, learned counsel for the petitioner prays for direction to expedite the suit.

11. Considering the nature of dispute involved in the suit and law in this regard, the learned trial Court is directed to expedite the suit and decide the same at the earliest.

[ANIL S. KILOR, J.]

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