

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

Writ Petition No.2466 of 2022

PRAMOD S/O LATE NAMDEORAO SANGIDWAR VS VEENA W/O RAMESH WADDETTIWAR 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 Kunal Nalamwar, Advocate for the Petitioner

**CORAM : ANIL S. KILOR, J.
DATED : 17.01.2023**

1. Heard.
2. In this petition, the judgment and order dated 01.07.2021 passed by the Additional District Judge-I, Gondia in Misc. Civil Appeal No.4 of 2017, allowing the appeal and thereby, setting aside the order below Exh.5 dated 15.12.2016 in Regular Civil Suit No.8 of 2016 passed by the Civil Judge Junior Division, Deori restraining the defendant Nos.1 to 3 from creating third party interest and making any development in the suit property till final disposal of the suit, is under challenge.
3. It is evident from the record that prior to the Will in question, which was executed on 22.07.1998, there was a partition between Namdeorao, and his two sons i.e. the petitioner and respondent No.4, on 04.11.1997 regarding the suit property. It is clear that in the said partition, the shares of Namdeorao and his two sons, were crystalised and therefore, there is no authority to Namdeorao to execute the Will subsequent to the partition of the suit property.

4. Thus, considering the rights of the parties in the suit property and the conflicting stand taken by the defendant No.1, I am of the opinion that both the Courts-below rightly directed the defendant Nos.1 to 3 not to create any third party interest and further they are restrained from making any development, in the suit property, till final disposal of the suit.

5. In view of the observations made by the learned lower Appellate Court, I do not find any error or perversity in the impugned judgment and order. In the circumstances, I do not find any merit in the writ petition, accordingly, it is **dismissed**.

6. It is made clear that the observations made by the learned lower Appellate Court in the impugned judgment and order, are *prima facie* and the learned trial Court shall not be influenced by it while deciding the suit.

[ANIL S. KILOR, J.]