

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

Writ Petition No.6880 of 2018

Yogesh Rajaram Bhoyar And Another Vs Shamrao Parshuram Jondhulkar 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 V.N. Morande, Advocate for the Petitioner/s
Ms Sneha Dhote, Advocate h/f Shri Vyas, Advocate for the respondent Nos.1
to 4

CORAM : ANIL S. KILOR, J.

DATED : 26.07.2023

1. Heard.
2. In this petition, a challenge is raised to the order dated 20.06.2018, refusing to amalgamate two Regular Civil Suits(RCS), namely RCS No.4 of 2017 in respect of right of way from the suit property and RCS No.71 of 2016 to restrain the present petitioners from proceeding through the suit property.
3. The only ground on which the learned 2nd Joint Civil Judge Junior Division, Gadchiroli has rejected the application Exh.48 is that, there is no provision permitting amalgamation of two suits.
4. It appears from the impugned order that the learned trial Court has not considered the inherent powers of Court under Section 151 of the Code of Civil Procedure while deciding the application Exh.48 and insisted for specific provision as regards to the amalgamation.

5. In the circumstances, I am of the opinion that the matter need to be remanded back to the learned 2nd Joint Civil Judge Junior Division, Gadchiroli to decide the application Exh.48 afresh, in accordance with law. Accordingly, I pass the following order:

- (i) The writ petition is partly **allowed**.
- (ii) The order below Exh.48 dated 20.06.2018 passed by learned 2nd Joint Civil Judge Junior Division, Gadchiroli, is hereby quashed and set aside.
- (iii) The application Exh.48 is remanded back to the learned 2nd Joint Civil Judge Junior Division, Gadchiroli for deciding the same afresh, in accordance with law.
- (iv) The learned 2nd Joint Civil Judge Junior Division, Gadchiroli shall decide the application Exh. 48 within one month from today.
- (v) Both the parties have undertaken to co-operate the learned trial Court to decide the application Exh.48 within stipulated period.

[ANIL S. KILOR, J.]