

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

WRIT PETITION (WP) NO.8392 OF 2018

- 1) Anil S/o Fattuji Bawankar,
aged about 53 years, Occupation :
Agriculturist, R/o Dattatrya Nagar,
Tumsar, Tahsil Tumsar, Dist. Bhandara

.... Petitioner(s)

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- 1) Moreshwar S/o Baburaoji Nikhade,
aged about 62 years, Occupation:
Cultivation, R/o Ramkrushna Nagar,
Tumsar, Tahsil Tumsar, Dist. Bhandara
- 2) Siddheshwar S/o Baburaoji Nikhade,
aged about 63 years, Occupation:
Business R/o Mahalaxmi Apartments,
Plot No.6, Dhantoli, Nagpur, Dist.
Nagpur
- 3) The State of Maharashtra, through
Collector, Bhandara, representing
Revenue and Project Affected Persons
Rehabilitation Department, Bhandara
- 4) Tahsildar, Tumsar, Tahsil Tumsar,
District Bhandara

... Respondent(s)

Shri N.B. Kalwaghe, Advocate for the Petitioner/s
Ms H.N. Jaipurkar, AGP for the Respondent Nos.3 and 4/State
Shri V.D. Muley, Advocate for the respondent No.1

**CORAM : ANIL S. KILOR, J.
DATED : 26.07.2023**

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent by the parties. None appeared for the respondent No.2, though served.
3. In the present matter, the order below Exh.5 was allowed by the learned Civil Judge Senior Division, Bhandara and thereby the defendants were restrained by way of ad interim temporary injunction from disturbing the possession of the plaintiff over the land area 3.11.05 H.R. In appeal, the said order was set aside by the learned Principal District Judge, Bhandara, allowing the appeal vide judgment and order dated 15.09.2018, the same is the subject matter of the present writ petition.
4. The record shows that the temporary injunction was granted on 07.04.2017 and it was in operation till 15.09.2018 i.e. till it was set aside by the lower Appellate Court and thereafter, the interim protection was granted by this Court vide order dated 11.12.2018.

5. Thus, from 07.04.2017, except for three months, from last six years, the temporary injunction is in operation in favour of the petitioner.

6. Apart from the above referred facts, there is no dispute that the petitioner has purchased the land from the defendant No.2, Siddheshwar s/o Baburaoji Nikhade, who is undisputedly a co-owner of the land in question with the defendant No.1 even if it is held that the partition is not proved.

7. It is not a case of the defendant No.1 that the defendant No.2 has sold out the land more than his legal share. Thus, considering the above referred facts, the learned trial Court had granted temporary injunction, which was set aside by the learned lower Appellate Court on the ground that the partition was not proved. It is the matter of evidence, whether there was a partition or not. However, *prima facie* as the petitioner has purchased the land in question from the defendant No.2, who is the co-owner in the property, I am of the opinion that the order passed by the learned trial Court is just and proper. Accordingly, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The judgment and order dated 15.09.2018 passed by Principal District Judge, Bhandara in Misc. Civil Appeal No.23 of 2017, is hereby quashed and set aside and the order below Exh.5 dated 07.04.2017 passed by the learned Civil Judge Senior Division, Bhandara, is hereby confirmed.

Needless to mention here that the findings recorded in this order are *prima facie*. All the points are kept open.

Rule accordingly. No costs.

- 8. At this stage, the counsel for the respective parties have made a joint prayer for expediting the suit.
- 9. Considering the nature of the dispute and the period for which the suit is pending, the learned trial Court is directed to expedite the suit and decide the same within nine months from today.

[ANIL S. KILOR, J.]