

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

WRIT PETITION (WP) NO.8393 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.

... Respondent(s)

Shri N.B. Kalwaghe, Advocate for the Petitioner/s
Ms H.N. Jaipurkar, AGP for the Respondent No.3/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 application Exh.5 for temporary injunction filed by the plaintiff/respondent No.1 came to be rejected by Civil Judge Senior Division, Bhandara which was challenged before Principal District Judge, Bhandara, in Misc. Civil Appeal No.20 of 2017, which came to be allowed, by granting temporary injunction restrained the petitioner from disturbing the possession of the plaintiff/respondent No.1 over the suit property 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 refused on 07.04.2017 by the trial Court and after one year and five months, it was granted by the learned lower Appellate Court. Thereafter, this Court vide order dated 11.12.2018 stayed the order of the learned lower Appellate Court. Hence, it is evident that from 07.04.2017 temporary injunction is in operation in favour of the

respondent No.1 till date, except for a period of three month, i.e. from the date of temporary injunction granted by the learned lower Appellate Court and till the time it was stayed by this Court.

5. This Court, in Writ Petition No.8392 of 2018 filed by the petitioner, granted injunction in favour of the petitioner in relation to the same suit land and while doing so, the reasons are recorded in paragraph Nos.6 and 7 of the said judgment and order, which read thus:

“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. ...”

6. In the circumstances, 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.20 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.

- 7. At this stage, the counsel for the respective parties have made a joint prayer for expediting the suit.
- 8. 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.]