

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1070 OF 2024

Nagesh Namdev Patil & Ors.

.. Petitioners

Versus

Sudhakar Namdev Patil & Ors.

.. Respondents

-
- Mr. Umesh R. Mankapure for Petitioners
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 29, 2024

P. C.:

1. Heard Mr. Mankapure, learned Advocate for Petitioners.
2. This Writ Petition can be disposed of at the stage of admission itself by giving an appropriate clarification. The impugned Judgment & Order dated 22.08.2023 passed in the present Petition is passed by the Principal District Judge, Sangli. This Judgment is delivered in a reference proceedings under Section 3(H) of the National Highways Act. Parties before the learned trial court are five siblings. Non-Applicant Nos. 1 to 3 are three brothers on one side and there is another brother called Bhaskar Patil who is stated to be missing but adequately represented by his branch. Another Non-Applicant is No. 5 who is their sister.
3. At the outset, Mr. Mankapure in his usual fairness has informed the Court that Partition Suit being RCS. Suit No. 174/2018 is pending

in the Court of Civil Judge Junior Division, Kavthemahankal. He would submit that this Partition Suit is essentially between the first three Non-Applicants regarding their shares. According to him, Non-Applicant Nos. 1 and 2 whom he represents are entitled to $3/5^{\text{th}}$ share in the suit property i.e. the compensation that would be available after acquisition of the suit property, in view of the fact that their father Namdev Patil had already effected partition between the siblings in respect of his property. According to Petitioners, the branch of missing Bhaskar Patil, the sister and Non-Applicant Nos. 1 and 2 only would be entitled to the entire property of Namdev Patil considering that Non-Applicant No. 3 i.e. Sudhakar Namdev Patil was already given his separate share by their father and in respect of which a substantial partition Suit is already pending before the learned Trial Court.

4. In view of the above facts, Petitioners would submit that one of the suit properties i.e. Gat No. 37 came to be acquired. Compensation is in respect of this property was deposited before the Reference Court. He would submit that by virtue of the impugned judgment, learned reference Court has in the operative part of the said judgment given a direction that the Non-Applicant No.3 be given $1/5^{\text{th}}$ share on his furnishing security to refund that amount to any person found to be entitled to that share in RCS No. 174/2018. Mr. Mankapure takes serious objection to this direction to the limited extent that by virtue of

this direction, it should not be construed by the Non-Applicant No. 3 and the Trial Court hearing the Partition Suit that the Non-Applicant No. 3 is otherwise entitled to 1/5th share. Submissions made by Mr. Mankapure are appropriate and such a clarification is required to be given since RCS No. 174/2018 is yet pending adjudication before the Trial Court. It is therefore directed that the said Partition Suit shall be determined on its own merits and the evidence that shall be led by the respective parties to the said Suit for determination of their respective shares. It is clarified that the reference of 1/5th in the impugned judgment in so far as the Non-Applicant No. 3 is concerned shall not be construed to be his 1/5th share considering that the Partition Suit between parties is yet to be decided. In so far as furnishing of security to refund the amount is concerned, there cannot be any objection to that direction since the 1/5th share of compensation released to Non-Applicant No. 3 stands fully protected and secured. The learned Trial Court shall only ensure that an appropriate security to secure the entire amount of 1/5th share released shall be taken from the Non-Applicant so that whoever succeeds to their claim in RCS No. 178/2018 shall be entitled to the same.

5. This order passed in the present Writ Petition shall be read along with the judgment dated 22.08.2023 passed by the learned Trial Court while determining RCS No. 174/2018 between the parties.

6. With the above directions, Writ Petition is disposed.

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[MILIND N. JADHAV, J.]

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