



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

CRIMINAL WRIT PETITION NO. 578 OF 2024

PETITIONERS

- : 1] Harishchandra S/o Nathhoba Dafe,
Aged 74 years, Occu. Agriculturist,
R/o Near Pratap Bhavan, Shani Mandir Ward,
Arvi, Tal. Arvi, Dist. Wardha.
- 2] Chandrakant Harishchandra Dafe,
Aged 46 years, Occu. Agriculture,
R/o Plot no. 102, Shri Mangal Apartment,
Parvati Nagar, Manewada-Besa Road,
Nagpur, Dist. Nagpur – 440 027.

VERSUS

RESPONDENTS

- : 1] Rekha Vinod Dafe,
Aged 38 years, Occu. Labour,
C/o Kamla Punjaram Gulhane
- 2] Aryan Vinod Dafe,
Aged 10 years, Minor through its mother
i.e. petitioner no.1
- 3] Sejal Vinod Dafe,
Aged 9 years, through its mother
i.e. petitioner no.1.
- R/o Kamla Punjaram Gulhane,
Rajura Bazar, Tal. Warud, Dist. Amravati.

Mr. Mahesh V. Rai, Advocate for the petitioners
Nobody appears for respondents, though served.

CORAM : G. A. SANAP, J.
DATED : DECEMBER 16, 2024.

ORAL JUDGMENT

1. **RULE.**

2. Rule made returnable forthwith. Heard finally with the consent of the learned advocate for the petitioner. The respondents, though served, have failed to appear before the Court.

3. In this petition, challenge is to the judgment and order dated 05.04.2023 to the extent of condition no.5 of the operative part, passed by learned Judicial Magistrate, First Class, Warud, Dist. Amravati.

4. Petitioner no.1 is the father-in-law of respondent no.1. Petitioner no.2 is the brother-in-law of respondent no.1. It is the case of the petitioners that petitioner no.1 is the owner of land bearing survey No. 72, situated at mouza Ashta, Tal. Arvi, Dist. Wardha . Petitioner no.2 is the owner of land Survey No.73 situated at Ashta, Tah. Arvi, Dist. Wardha. It is stated that they were not party to the proceedings filed by respondent no.1 under the Protection of Women from Domestic Violence Act, 2005 (for short "D.V. Act"). Respondent no.1 did not make any allegation of domestic violence against the petitioners. The impugned order, particularly clause (5) thereof, was passed without granting them an opportunity of hearing. It is submitted that the

husband of respondent no.1 is concerned with the land bearing Survey No. 71 and to the extent of land survey no. 71, the petitioners have no grievance as far as clause (5) is concerned.

5. Learned advocate for the petitioners took me through the Sale Deed of Survey No. 73 executed in favour of petitioner no.1. Learned advocate also took me through the Gift Deed of land survey No. 72 executed in favour of petitioner no.2 by petitioner no.1. Learned advocate submitted that the petitioners cannot avail the remedy of appeal because they were not party to the original proceedings. It is submitted that the impugned order has been passed in respect of their respective lands without granting them an opportunity of hearing. It is submitted that the liability to pay the maintenance and other charges has not been saddled on them. It is pointed out that as per clause (5) of the operative part of the impugned order, a direction has been issued that the lands bearing survey Nos.71 to 73 shall not be disposed of without the consent of the respondents.

6. On going through the record and proceedings, I am satisfied that there was no allegation of domestic violence by the respondent no.1 against the petitioners. They were not party to the domestic violence proceedings. No liability has been fastened on them.

Similarly, no charge has been created on the lands owned by the petitioners for recovery of maintenance etc. In my opinion, therefore, this part of the order, namely clause (5), pertaining to survey Nos. 72 and 73, needs to be set aside.

7. Accordingly, the Criminal Writ Petition is allowed.

8. Rule is made absolute in terms of prayer clause (a), which read as follows :

“(a) quash and set aside clause no.5 in the operative part of the order and judgment dated 05.04.2023 to the extent of GUT no. 72 to 73 passed by the learned J.M.F.C., Warud, Amravati directing not to dispose or alienate the agricultural field i.e. GUT No.71 to 73 without the permission of the respondent no.1.”

9. The petition stands disposed of in the aforesaid terms.

(G. A. SANAP, J.)

Diwale