



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

WRIT PETITION NO. 6283 OF 2024

Shriram s/o Rambhau Bhange,
Aged about 63 yrs, Occ. Agriculturist,
R/o Plot No. 22, Near Hanuman
Mandir, Gittikhadan, Borgaon,
Ekta Nagar, Nagpur,
Tah. and Dist. nagpur

....PETITIONER

...V E R S U S...

1. Smt. Sumitrabai wd/o Bhaurao Kadu,
Aged about 70 yrs, Occ. Agriculturist,
r/o Dhapewada (Kh), Tah. Kalmeshwar,
Dist. Nagpur.

2. Smt. Archana w/o Suresh Gotmare,
prior to marriage Archana d/o
Bhaurao Kadu, Aged about 45 yrs,
Occ. Housewife,
R/o. Village Ghorad,
Tah. Kalmeshwar, Dist. Nagpur.

3. Smt. Mangala d/o Bhaurao Kadu,
Aged about 43 yrs, Occ. Agriculturist,
r/o Dhapewada (Kh), Tah. Kalmeshwar,
Dist. Nagpur.

...RESPONDENTS

Mr. M.R. Joharapurkar, Advocate for petitioner
Mr. Y.R. Kinkhede, Advocate for respondent Nos. 1 to 3.

CORAM:- M.W. CHANDWANI, J.
DATE :- 28.01.2026

ORAL JUDGMENT:

Heard learned counsels for the respective parties.

2. The challenge is to the orders dated 16.4.2024, passed below Exh. 100 and dated 4.9.2024, passed below Exh. 102 by learned Civil Judge, Senior Division, Saoner, in Special Civil Suit No. 98/2023, thereby refusing to call the Deputy Superintendent of Land Records, Kalmeshwar, Nagpur on record for adducing the evidence in the suit of specific performance of contract.

3. The contention is that though the petitioner is not entitled to a specific share, but on precept, the partition was done among the co-sharers and the rules relating to fragmentation have been followed, so the partition have been effected appropriately and consequently he would have received his appropriate share of land.

4. The application is objected on the ground that under the agreement to sale, no specific share was sold to the petitioner, but only a 3/4th share of the suit property comprising land Gat Nos. 39/3 and 40 were sold.

5. No doubt, no specific share was agreed to be sold to the petitioner, but the petitioner who has agreed to purchase the share of one of the co-sharers, can have say while the property is being partitioned. Tomorrow to provide undue advantage to the co-sharer,

the other co-sharer, who agreed to sell the property, may agree to any term of other co-sharer which may be prejudicial to interest of the petitioner. Be that as it may, no prejudice will be caused to the respondents, since this point is to be decided on the merits of the suit. At this stage, the petitioner seeks to examine the witness, namely Deputy Superintendent of Land Records, to bring on record some facts relating to how measurement/partition was carried out. At present, the witness can be let to be examined, since no prejudice would be caused to the respondents and a fair opportunity to contest the suit will as well be given to the petitioner.

6. The orders impugned dated 16.4.2024, passed below Exh. 100 and dated 4.9.2024, passed below Exh. 102 by learned Civil Judge, Senior Division, Saoner, in Special Civil Suit No. 98/2023 is hereby quashed and set aside. Application Exh. 100 is allowed.

7. The learned trial Court shall not be influenced by order of this Court and shall decide the suit at the earliest. All contentions of the parties are kept open at the time of merit of the case before the trial Court.

(M.W. CHANDWANI, J.)

Belkhede PS