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P. C. :

1. Heard learned counsel appearing for the parties.
2. By the present Appeal, the appellant is challenging the Judgment and Order dated 19th January, 2024 passed by the learned 5th Joint Civil Judge, Senior Division, Sangli in Special Civil Suit No.540 of 2023 and the Judgment and Order dated 22nd February, 2024 passed by the learned 5th Joint Civil Judge, Senior Division, Sangli thereby rejecting the application below Exhibit 5. Although both the applications are titled as Exhibit 5, the first order dated 19th January, 2024 was rejected in so far as defendant Nos.21, 25, 28 and 29 are concerned. The next order dated 22nd February, 2024 was passed against all the defendants except Defendant Nos.21,25,28 and 29. Defendant Nos.21, 25, 28 and 29 are the financial institutions and its officers. A Civil Suit was filed by the plaintiff earlier in point of time viz. Special Civil Suit No.71 of 2018 for partition. The said suit was pending. During pendency of the said suit, a fresh suit was filed by the plaintiff bearing Special Civil Suit No.540 of 2023. In the said suit, the plaintiff had sought the prayers,

inter alia, declaration that the act of defendant Nos.1, 2,3,5,6,8,10 and 13 to 15 of mortgaging the property with the financial institutions is bad in law and that the said mortgage and act of taking the loans from the financial institutions is not binding upon the plaintiff. In the said suit, an application below Exhibit 5 was filed wherein two reliefs were sought against the defendants therein viz; (i) to restrain defendant Nos.1 to 15 from taking loan and creating encumbrances upon the suit property; (ii) restraining the banks from giving loan and restraining the recovery officer from taking illegal possession of the suit property. The learned trial court by two different orders passed below Exhibit 5 had rejected the applications.

3. Mr. Kulkarni, learned counsel appearing for the appellant submitted that the partition deed is an unregistered deed, however, everyone has acted as per the partition deed. He submits that this MOU need not be registered. He submitted that the property was properly distributed and that there was no reason for the defendants to undermine the document of partition viz. partition deed. He submitted that the impugned judgment and order, therefore, is bad in law and

deserves to be quashed and set aside. He submitted that the properties being joint properties of all the family members, the defendants do not have any right of mortgaging and encumbrancing the property. He submitted that if that is done, the entire property will be wasted. He submitted that defendant Nos.1 to 15 by joining hands with defendant Nos.22 to 30 borrowed crores of rupees on the property. Therefore, the property in question was wasted. He submitted that the impugned Judgment and Order is bad in law and, therefore, deserves to be quashed and set aside.

4. It is admitted case that Special Civil Suit No.71 of 2018 is filed by the plaintiff and that the said suit is pending adjudication. The said suit is for partition, declaration and injunction. If the prayers of the present suit i.e Special Civil Suit No.540 of 2023 are perused then it is clear that the prayer is for declaration that the defendants have no right to mortgage the property with the defendant-banks.

5. I have considered the prayers of both the suits minutely. As on today, Special Civil Suit No.71 of 2018 which is prior in point of time is

pending for partition, declaration and for further reliefs. If this was so then the plaintiff could have sought the same relief in the said suit bearing No.71 of 2018 and that filing of a substantive suit for the purpose of getting the declarations as stated above is not maintainable. Admittedly, property which is subject matter of Special Civil Suit No. 540 of 2023 is the same property which is involved in partition suit bearing No.71 of 2018. Hence, by no stretch of imagination, the second suit for the same cause of action would be maintainable. The plaintiff definitely had a remedy to espouse his cause in that suit.

6. Whether or not the partition can be granted, whether or not the plaintiff has any right in the suit property is *sub judice* and is pending for consideration in Special Civil Suit No.71 of 2018. Filing of the suit and raising same contention in this suit is therefore not proper. The finding of the learned Trial Court on this issue is correct and does not require interference at the hands of this court. Coupled with the facts, learned trial court has correctly held that the plaintiff had knowledge in the year 2018 itself about the loan borrowed by defendant Nos.10 to 15 but the suit is filed after five years. Although the court has held that

this was, *prima facie*, beyond limitation, I do not choose to express any view on the issue of limitation. Suffice it to say that there was enormous delay and latches for the purpose of seeking these reliefs. This is yet another ground on which I do not propose to interfere in the judgment and order passed by the learned trial Court. Hence, the following order;

: ORDER :

- (a) The Appeal from Order is rejected.
- (b) Ad-interim relief granted by this court is vacated.
- (c) In view of rejection of Appeal from Order, Interim Application also stands disposed of.

7. At this stage, learned counsel for the appellant submits that appellant desires to challenge this order before the Apex Court and hence observations made by this court on 26th November, 2024 which read as under, be continued.

“By way of ad-interim relief till the next date, if the Respondent Nos.1 to 15 create any 3rd party interest or encumbrances over the suit property or part thereof, it will not bind the share of the applicant”.

8. Since I have rejected the interim order for the reasons mentioned in the detail above, I do not find any reason to continue the ad-interim relief.

[SANDESH D. PATIL, J.]