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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.237 OF 2015

Heerabai Damodhar Narvade.

..Petitioner

-Versus-

Ramdas Shankarrao Barfe and another.

..Respondents

.....

Mr.PM.Gaikwad, Advocate for the Petitioner.

Ms.S.P.Kakade h/f G.S.Gadiwan, Advocates for the Respondent Nos.1 and 2.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd March, 2015

Per Court:

1 I have heard the learned Advocates appearing for the respective sides, for quite sometime.

2 The property bearing RL-285/4 was owned by the husband of the Petitioner (Damodhar Narvade) who has passed away on 06.11.2004. The Petitioner has obtained the heirship certificate from the Competent Authority in favour of herself and her two sons.

3 The Petitioner applied to the Maharashtra Industrial Development Corporation for transfer of the property after passing away

of her husband. The said property was, accordingly, transferred on 20.04.2005.

4 The Respondent No.1 is the owner of the property bearing RL-285/1. The plot RL-285 has four parts. The Respondent No.2 is the daughter of the real sister of the Petitioner and who is wife of the Respondent No.1.

5 The Petitioner has alleged that the Respondents have interfered with the peaceful possession and enjoyment of the House Property RL-285/4 which prompted the Petitioner to lodge a complaint with the Police Station. The criminal proceedings have been initiated and same are pending.

6 The Petitioner submits that since unjustified interference of the Respondents was continued, the Petitioner preferred Regular Civil Suit No.1173/2013 seeking perpetual injunction against the Respondents. The application (Exhibit-5) under Order 39 Rule 1 of the Code of Civil Procedure was allowed by the Trial Court on 19.11.2014.

7 The Respondents preferred Miscellaneous Civil Appeal No.203/2014 and same was allowed by the impugned judgment and

order dated 06.12.2014.

8 The Appeal Court has set aside the order of injunction granted by the Trial Court primarily on two counts, firstly, there was an agreement of sale and transfer of the property between the litigating sides and secondly that the Appellants, who are the Respondents herein, are in possession of the suit house.

9 There is a reference made to a police complaint filed with the Police Commissioner, Aurangabad wherein the Petitioner/ Plaintiff is said to have contended that the Respondents/ Defendants had forcibly taken the possession of her house. Taking into account the fact situation, as it prima facie appeared before the Appeal Court, the order of injunction granted by the Trial Court was set aside.

10 The grievance of the Petitioner is that she is a destitute lady. She is still in possession of the suit property RL-285/4. The impugned judgment of the Appeal Court is likely to seriously impact the peaceful possession of the Petitioner and therefore, the impugned judgment deserves to be set aside.

11 The Petitioner has also contended that the Respondents have

manufactured documents and by acts of forgery, they are attempting to grab the property of the Petitioner. They are likely to create third party interest and may induct more tenants. In the event, it so happens, there would be complications in the suit initiated by the Petitioner and more parties would be required to be added to the suit proceedings if the Respondents create such interest.

12 The learned Advocate appearing for the Respondents has submitted that an agreement to sale and transfer was signed between the Petitioner and the Respondents. The consideration was paid to the Petitioner. The possession was, accordingly, taken. The Respondents by resorting to construction have added the first floor to the existing ground floor suit property and have, therefore, improved the suit property. A tenant has also been inducted in the suit property. The Respondents have also preferred a suit before the Trial Court for seeking specific performance of the agreement to sale and transfer, which is pending. It is, therefore, submitted that the Respondents reside in the suit property and have also inducted a tenant. The interlocutory findings ought not be interfered with.

13 In the peculiar facts of this case wherein the Appeal Court has passed the impugned judgment and order setting aside the temporary

injunction order passed by the Trial Court and in the light of several disputed issues raised and canvassed by the litigating parties, in my view, ends of justice would be met by directing the Respondents not to create any third party interest in the matter till the decision in the said suit.

14 At the same time, in the event, the Respondents face any emergent situation either to create third party interest or to induct a new tenant, the Respondents, who are Defendants before the Trial Court, shall make an application before the Trial Court and seek prior permission of the Trial Court by making out a case of urgency. Needless to state, such an application would be dealt with by the Trial Court in accordance with law and by hearing all the litigating sides.

15 The litigating sides have assured this Court of cooperation to the Trial Court for the expeditious disposal of RCS No.1173/2013. In the light of this statement, the Trial Court shall be at liberty to reject applications for adjournments if it is sought on frivolous or unreasonable ground.

16 With the above observations, this Writ Petition is disposed of.

(RAVINDRA V. GHUGE, J.)