

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3642 OF 2014**

Rupali Pravin Mokashi

..Petitioner

Vs.

Dagadu Vithoba Kadu & Ors.

..Respondents

Mr. A. V. Anturkar, Senior Advocate with Mr. S. B. Deshmukh and Mr. Rushikesh Barge for the Petitioner

Mr. Madhav Jamdar for the Respondent Nos.1 to 5

CORAM : R. M. SAVANT, J.

DATE : 22nd JANUARY, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 6-2-2014 passed by the Learned District Judge -19, Pune, by which order, the Appeal filed by the Petitioner being Misc Civil Appeal No.441 of 2013, came to be dismissed and resultantly the order dated 30-10-2013 passed by the Learned 19th Civil Judge Junior Division, Pune, rejecting the application Exhibit 5 for temporary injunction came to be confirmed.

2 The Suit in question has been filed by the Petitioner i.e. the original Plaintiff for partition of the suit properties and also challenging two Sale Deeds dated 2005 and 2006, which have been executed without the consent of the Plaintiff. The Petitioner is also challenging the Will dated 6-8-2007 executed by the Defendant No.1 in favour of the other Defendants.

3 In the said Suit, the Plaintiff filed an application Exhibit 5 for temporary injunction and in support of the relief sought in the said application, the Plaintiff sought to place reliance on the amended provisions of the Hindu Succession Act and especially Section 6 thereof. The conspectus of law which deals with the said amendment to the Hindu Succession Act was also relied upon on behalf of the Plaintiff as also on behalf of the Defendants. The said judgments have been reflected in the orders passed by the Courts below. The Trial Court having regard to the fact that the Suit filed in the year 2012 challenges the Sale Deeds which have been executed in the year 2005 and 2006 as also considering the fact that the apprehension of the Plaintiff that the Defendants would further alienate the joint family properties was misfounded, held that the Plaintiff was not entitled to the discretionary relief of temporary injunction. The Trial Court accordingly by its order dated 30-10-2013 rejected the said application.

4 The Plaintiff aggrieved by the said order dated 30-10-2013 filed Misc Civil Appeal No.441 of 2013. The Lower Appellate Court on a re-appreciation of the material on record did not deem it appropriate to interfere with the order of the Trial Court refusing to exercise discretion in favour of the Plaintiff. The Lower Appellate Court reiterated the findings and observations of the Trial Court, in so far as the entitlement of the Plaintiff to the said

discretionary relief is concerned. The Lower Appellate Court has accordingly by the impugned order dismissed the said Appeal.

5 The Learned Senior Counsel Mr. Anturkar appearing on behalf of the Petitioner/Plaintiff sought to make submissions as regards the impact of the Judgment of the Full Bench of this Court in the matter of **Badrinarayan Shankar Bhandari & Ors. Vs. Omprakash Shankar Bhandari**¹

6 In my view, it is not necessary for this Court to delve into the said aspect having regard to the premise on the basis of which the orders passed by the Courts below have been founded. The contentions based on the amended provisions of Section 6 of the Hindu Succession Act as also the Full Bench Judgment of this Court, can obviously be urged by the Plaintiff at the hearing of the Suit. However, in so far as the concurrent orders passed by the Courts below are concerned, having regard to the premise on which they are founded, it cannot be said that the said orders suffer from any error of jurisdiction on the part of the courts below or any other illegality or infirmity for this Court to interdict in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

7 However, since the parties are closely related, the hearing of the Suit is expedited. Needless to state that the observations made in the impugned order as well as the instant order are only for the purposes of considering the

1 2014(5) Mh.L.J. 434

application for temporary injunction. The Suit would be tried on its own merits and in accordance with law and the parties would accordingly be entitled to urge their respective contentions before the Trial Court.

[R.M.SAVANT, J]