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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.5184 OF 2016
IN
WRIT PETITION NO.3218 OF 2015

Ambadas Mohan Karpe

APPLICANT

VERSUS

Prabhavati Narayan Tambe & others

RESPONDENTS

.....
Mr. Ajit B. Gaikwad, Advocate for the applicant

Mr. M. D. Joshi h/f Mr.R. M. Joshi, Adv. for respondents No.1 to 4

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 22nd APRIL, 2016

ORDER :

1. For the reasons contained in civil application, the same stands allowed in terms of prayer clause "B".
2. Writ petition No.3218 of 2015 accordingly stands restored.

[SUNIL P. DESHMUKH, J.]

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3155 OF 2015
WITH
WRIT PETITION NO.3218 OF 2015

Ambadas Mohan Karpe

PETITIONER

VERSUS

Prabhavati Narayan Tambe & others

RESPONDENTS

.....

Mr. Ajit B. Gaikwad, Advocate for the petitioner

Mr. M. D. Joshi h/f Mr. R. M. Joshi, Adv. for respondents No.1 to 4

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 22nd APRIL, 2016

ORDER :

1. These are the two writ petitions by the same petitioner against the same respondents involved in Regular Civil Suit No.350 of 2011, pending before civil judge, junior division, Paithan.

2. Writ petition No.3155 of 2015 is moved against grant of interim injunction in favour of plaintiffs and confirmation of the same in Miscellaneous Civil Appeal No.2 of 2013 by the district Judge, Aurangabad. Whereas writ petition No.3218 of 2015 concerns an order dated 25th June, 2014 on application Exhibit-

31 in Regular Civil Suit No.350 of 2011, whereunder request of the petitioner for rejection of the plaint pursuant to Order VII, Rule 11 of the Civil Procedure Code on the ground that having regard to section 6 on amendment to Hindu Succession Act and incorporation of section 29A in the same, the plaintiffs are precluded from institution of suit, as the provisions prohibit daughter from seeking partition, if the same is before 22nd June, 1994.

3. The trial court, while rejecting application Exhibit-31 has observed that the case will have to be decided with reference to the facts which will have to be established upon evidence and as such, the application is not tenable.

4. As such, there does not appear to be any infirmity in the reasoning given by the trial court while rejecting the application Exhibit-31.

5. As far as writ petition No.3155 of 2015 is concerned, it is against concurrent findings of facts referring to *prima faice* case, balance of convenience and irreparable loss likely to be suffered by the plaintiff. It appears that the injunction granted is an innocuous injunction wherein the petitioner-defendant has been restrained from alienating the suit property and creating third

party interest over the same.

6. Having regard to aforesaid, the writ petitions are not liable to be entertained and the same stand rejected.

7. Learned advocates, at this stage state that evidence is about to commence in the suit and as such, request that the trial court be directed to dispose of the suit expeditiously.

8. In view of aforesaid, it will be expedient that the trial court takes up regular civil suit No.350 of 2011 for expeditious disposal, preferably within a period of six months from the date of receipt of writ of this order.

[SUNIL P. DESHMUKH, J.]

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