

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

CIVIL APPLICATION NO. 707 OF 2014

IN

SECOND APPEAL NO. 269 OF 2014

Seema Tulshiram Malgunde.

... Applicant/Appellant.

V/s.

Smt. Rakhmabai Tulsiram Malgunde
and Ors.

... Respondents.

Mr. Siddheshwar Kalel for the Applicant/Appellant.

Mr. G.M. Savagave a/w. Abhiman Patil for Respondents 1 & 2,
4,5,6,7,8 and 11.

CORAM : N.M. Jamdar, J.

15 July, 2016.

P.C. :-

The Civil Application is filed seeking an order of injunction to restrain the Respondents from creating third party rights in the suit property.

2. Heard learned Counsel for the parties.

3. Leave to amend the prayer clause to incorporate details of the properties in respect of injunction is sought. Amendment to be carried out within period of two weeks.

4. The Suit was filed by the Appellant for partition and separate possession of the property of agricultural land Gat No. 137 admeasuring 4 H, 29 R, Gat No. 140 admeasuring 2H, 63 R, Gat No. 181 admeasuring 3 H, 06 Pot Kharaba 02 R, Gat No. 368/1 admeasuring 1 H, 14 R pot kharaba 01 R, Gat No. 368/2, admeasuring 0H 14 R of Village Jalochi, Taluka Baramati and Gat No. 342 admeasuring 8 H 07 R pot kharaba 90R to to the extent of 2 H 60R of Village Kanheri, Taluka – Baramati. The learned Civil Judge partly decreed the Suit and declared that the Appellant is entitled to 1/3rd share in suit land i.e. Gat No. 342 admeasuring 8 H 07 R pot kharaba 90R to the extent of 2 H 60R in the share of Tulshiram Dagdu Malgunde of Village Kanheri, Taluka Baramati, District Pune. Appeal filed by the Appellant in the District Court was dismissed thereafter, the present Second Appeal is filed.

5. In this Application, the dispute relating the 1/3rd share claimed by the Appellant in suit land Gat No. 342. The learned Counsel for the Applicant submits that in view of the fact that the question of law is referred to the larger bench in the Apex Court and is pending consideration, the Respondents be restrained from

creating third party rights in the entire property. The learned Counsel for the Respondents submits that ultimately the share claimed is only $1/3^{\text{rd}}$ and therefore, the Respondents may not be put under restraint from creating third party rights if they so desire, in their share.

6. Considering the facts and circumstances and the apprehension expressed by the learned Counsel for the Applicant, the Civil Application is disposed of as under :-

(a) The Respondents will keep aside $1/3^{\text{rd}}$ part out of Gat Nos 137, 140, 181, 368/1 and 368/2 without creating any third party rights till the disposal of the Second Appeal.

(b) While keeping aside the $1/3^{\text{rd}}$ part, the Respondents will ensure that the said $1/3^{\text{rd}}$ part does not become land locked by creation of any third party rights by them, if any.

7. This would adequately safe-guard the rights of the Applicant pending the hearing of the Appeal. The Civil Application is disposed of in above terms.

(N.M. Jamdar, J.)

