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

APPEAL FROM ORDER NO. 1049 OF 2015

with

CIVIL APPLICATION NO. 1289 OF 2015

Smt. Rohini Ramchandra Tharkude. ... Appellant/Applicant.

V/s.

Smt. Sindubai Raghunath Kate & Ors. ... Respondents.

Mr. S.A. Sawant i/b. Himanshu Kode for the Appellant/Applicant.

Mr. Vilas Shelar for Respondent 1 to 5.

Mr. Mahesh Rawool i/b. Smita Mane for Respondent 7.

CORAM : N.M. Jamdar, J.

30 June, 2016.

Oral Order :-

The Appellant challenges the judgment and order passed by the Civil Judge, Senior Division, Pune dated 31 August 2015 rejected the Application filed by the Appellant – Plaintiff below Exhibit 5 in Special Civil Suit No. 1242 of 2014. The Application was filed by the Appellant – Plaintiff to restrain the Respondents from creating third party rights.

2. The learned Civil Judge, Small Causes Court, Pune upon perusal of the pleadings and the material on record rendered a prima-facie finding that the claim of the Appellant that she was daughter of third wife of late Shankar Sakharam Kate, was not believable. The learned Judge prima-facie found discrepancies in the birth date and other documents. It was found that there was change in maiden name of the Appellant and as per the death extract produced on record, the alleged claim that the third wife i.e. the mother of the Appellant, the marriage with the third wife could not have taken place after the year 1997 since Shankar has already demised in the year 1997. The learned Judge also found that since the marriage had taken place after 1997, the Appellant could not have been 63 years old in the year 2014.

3. I have heard the learned Counsel for the parties. In the plaint there are no details as to when the third marriage took place. Nothing is shown how this prima-facie finding is incorrect. Therefore, at this stage, I am not inclined to interfere with the discretion used by the learned District Judge.

4. The learned Counsel for the Appellant submitted that if the Respondent No.7 – Developer creates interest in the suit property in favour of Respondent Nos. 1 to 6 and thereafter create further third party rights, then there will be various difficulties in the pending suit.

5. In view of the above discussion, I am not inclined to grant any order to restrain the Respondent No.7 developer to execute necessary document in favour of Respondent Nos. 1 to 6. The learned Counsel for Respondent Nos. 1 to 6 makes a statement that after the Respondent No. 7 execute a sale deed or create interest in the suit property in favour of Respondent Nos.1 to 6, they will not create further third party rights, pending the Suit. This statement is accepted.

6. The Appeal is accordingly dismissed. All observations made in this Appeal are prima-facie and the Suit will be tried on its own merits.

7. It is clarified that there is no impediment in the way of Defendant No.7 executing necessary documents and interest in favour of Respondent Nos.1 to 6.

8. Civil application is disposed of accordingly.

(N.M. Jamdar, J.)