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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12515 OF 2015

Mrs.Mumtaz Suleman Khan and others ... Petitioners

Vs.

Shaikh Jamaluddin Riyazuddin and others ... Respondents

Mr.mohit P.Jadhav, Advocate for Petitioners.

CORAM : R.G.KETKAR, J.

DATE : 14th JANUARY, 2016

P.C. :

. Not on board. At the request of Mr.Jadhav taken up for admission.

2. By this Petition under Article 227 of the Constitution of India, original defendant No.3 has challenged the judgment and order dated 05/09/2015 passed by the learned Judge presiding over Court Room No. 37 of the Small Causes Court at Mumbai, Bandra Branch below Exhibit 25 in R.A.E. & R.Suit No.389/730 of 2009. By that order, the learned trial judge rejected the application made by defendant No.3 for staying that Suit filed in the Small Causes Court on the ground of pendency of the Suit on the Original Side of this Court. Mr.Jadhav submitted that plaintiffs have instituted Suit on 24/12/2009 on the Original Side of this Court inter alia praying for declaration that plaintiffs and defendants therein are entitled to

property described in Exhibit A and such other properties as may be found discovered or disclosed as belonging to the estate of the deceased in the ratio of shares as described in paragraph 6 of the plaint.

3. Defendant No. 3's brothers have instituted eviction Suit against him on 06/10/2009. He submitted that as defendant No.3's claim in the Suit instituted on the Original Side of this Court is pending the Suit filed in the Small Causes Court deserves to be stayed. It is not possible to accept this submission. As noted earlier, Suit in the Small Causes Court is lodged on 06/10/2009. The Suit on the Original Side is lodged on 24/12/2009. In other words, Suit in the Small Causes Court is instituted prior in point of time. In view thereof, no case is made for interfering with the impugned order. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)