

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO.1805 OF 2016

Sunanda Bharat Jamdar

.. Petitioner

vs

Ranjeet Satyawar Jamdar

.. Respondent

Mr.Tushar Sonawane I.b Mr.P.S.Hagare for Petitioner

None for Respondent

CORAM: G.S.KULKARNI, J

DATE: 4 OCTOBER 2016

P.C.

1. The original plaintiff has filed this petition challenging the order dated 9 September 2015 whereby the petitioner's Misc.Civil Appeal No.47 of 2015 against an order passed by the learned trial Judge rejecting the application for temporary injunction below Exhibit 5 has been rejected. The petitioner has filed the suit in question seeking relief of a declaration that the suit property is the sole ownership of the petitioner and further relief of a perpetual injunction that the defendants be restrained from disturbing her possession and enjoyment of the suit property. The petitioners and the defendants are related to each other. The respondent-defendant is the nephew of the petitioner. The case of the petitioner is that the suit property though purchased jointly by the petitioner and the respondent under a sale deed dated 8 October 1998 the entire

payment in respect of the purchase price was given by the petitioner's husband. This has been disputed by the respondent. The learned trial Judge in rejecting the injunction application as filed by the petitioner has recorded a *prima facie* finding that the plea as urged by the petitioner in the suit was hit by Benami Transaction (Prohibition) Act as also assertions of the petitioner/Plaintiff are required to be gone into at the trial of the suit. It is also observed that the oral assertions of the petitioner cannot stand against the documents of sale deed dated 8.10.1998. These findings have found favour in the impugned order passed by the learned District Judge.

2. The learned District Judge taking into consideration the facts and circumstances of the case and on the basis of the contents of the Sale deed and taking into consideration the legal position arising under the Benami Transactions (Prohibition) Act held that the plea of the petitioner that the entire purchase price was paid by the petitioner's husband cannot be accepted and the same would be contrary to the provisions of the Benami Transactions Act. It is observed that the husband of the petitioner is not a party to the suit.

3. Having perused the concurrent findings as arrived by

the Courts below I do not find that the reasons as recorded by both the Courts below which I have noted above are in any manner perverse and considering the facts and circumstances of the case no case is made out by the petitioner/plaintiff for grant of any injunctory relief.

4. Resultantly, the petition is devoid of merits and is accordingly rejected. The petitioner is at liberty to approach the trial Court with a request for an early hearing of the suit. If such a request is made, the same shall be considered on its own merits.

5. The above observations are prima facie arising in the context of the interim injunction proceedings. Needless to observe that the learned trial Judge shall decide the suit on its own merits and without being influenced by this order and orders in question arising under the injunction application.

{G.S.Kulkarni, J}

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