

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 370 OF 2015

Kisangopal Chhaganlal Sarda & Ano. Vs. Shivani Kamal Sarda (Now Shivani Amit Bhaiyya)

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Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Dr. R. S. Sundaram Adv for petitioner.
Shri D. Pathak Adv for respondent.

CORAM: A. S. CHANDURKAR J.

DATED: 24th JUNE, 2016.

Heard. The petitioners who are the original defendants in a suit filed by the respondent for cancellation of sale deeds dated 06.05.2010 are aggrieved by the order passed by the appellate Court thereby restraining them from alienating the suit property and creating third party rights during pendency of the suit.

In the suit filed by the respondent, it is her case that the sale deeds dated 06.05.2010 are null and void and that they are not binding on her. A declaration has been sought that the respondent is the owner of the suit property. By filing an application for interim injunction, it was prayed that the petitioner be restrained from disposing of the suit property during pendency

of the suit. The trial Court by order dated 26.02.2014 rejected the application for temporary injunction and being aggrieved the respondent filed a Miscellaneous Civil Appeal. The appellate Court by the impugned order allowed the appeal and restrained the petitioners from alienating the suit property.

Dr. R. S. Sundaram, the learned counsel for the petitioners submitted that the appellate Court was not justified in interfering with the discretion exercised by the trial Court when it refused to grant injunction. According to him the sale deeds in question were legal and valid and that there was no possibility of the respondent succeeding in her prayer for declaring the same to be null and void. He therefore submitted that the order of the appellate Court deserves to be set aside.

Shri D. Pathak, the learned counsel for the respondent supported the impugned order. According to him the injunction as granted would prevent multiplicity of proceedings and would ensure that the rights of the parties are protected till the civil suit is decided. He, therefore, submitted that there is no case to interfere in writ jurisdiction.

Having heard the respective counsel and considering the fact that the validity of the sale deeds dated 06.05.2010 are in

question, the interim injunction granted by the appellate Court restraining the defendants from alienating or creating third party rights in the suit field cannot be said to be an order that results in causing grave prejudice to the defendants. The said order in fact prevents multiplicity of proceedings. The discretion as exercised therefore does not call for any interference.

By observing that the prima facie findings recorded by the appellate Court in the impugned order would not influence the trial Court when the suit is decided, the writ petition stands disposed of. However, the proceedings in Special Civil Suit No. 70 of 2013 are expedited and same shall be decided by the end of April 2017.

JUDGE

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