

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6888 OF 2015***

Sau. Meenakshi Laxman Shinde Petitioner
Versus
Sharad Daulat Tamhane & Ors. ...Respondents

**WITH
WRIT PETITION NO. 6895 OF 2015**

Sau. Meenakshi Laxman Shinde .. Petitioner
vs.
Leelawati Gangaram Shivarkar & Ors. Respondents

Mr. Narendra V. Sharma, for the Petitioner.
Mr. T.D. Deshmukh, for the Respondent Nos. 1 to 4.

***CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 9th November, 2017.***

P.C. :

1. Heard. Rule. Rule made returnable forthwith with consent of the parties.
2. The present petitioner happens to be the plaintiff in Special Civil Suit No.93 of 2012 pending before the Civil Judge, Senior Division, Baramati. It was the contention of the plaintiff that the sale deed executed between her father and the defendants is invalid as her father was incapacitated to

execute sale deed in favour of the defendants as he was suffering from Alzheimer as is demonstrated in the certificate dated 1.9.2012 which clearly indicates that her father was suffering from Alzheimer since 11.5.2010. Another certificate issued by Sassoon Hospital also indicates the same. The sale deed is dated 25.6.2012 which is subsequent to the certificate issued by the hospital. The plaintiff had filed an application below Exhibit 5 which was rejected. The appellate Court had also confirmed the said order passed below Exhibit 5.

3. In the interregnum, Santosh Macchindra Kudle and Suresh Muktaji Mhetre, who are neither defendants nor are concerned with the suit property, had filed affidavits before the Civil Judge, S.D., Palghar contending therein that the father of the plaintiff was never suffering from Alzheimer and in fact the sale deed was executed in good health and that he had fully understood the contents of the sale deed.

4. Being aggrieved by the filing of the said affidavits, the petitioners/plaintiffs had filed an application seeking the relief that Santosh and Suresh be prosecuted by the Court for perjury by taking recourse to section 195 of Cr.P.C. The learned Court had considered the fact that the Special Civil Suit No.93 of 2012 and 94 of 2012 had reached the stage of

hearing i.e. recording of evidence of plaintiff and her witnesses when the said application was filed. The defendants had not filed any application to the effect that they will examine two persons as their witnesses on oath. That the Court was of the opinion that the filing of the said application was at premature stage i.e. stage of recording of evidence of the plaintiff and her witnesses. The Court had also considered that the affidavit of said third parties would not affect merits of the matter and the same would not be necessary to determine the rights of the parties on merits. The application was rejected by an order dated 10.3.2015.

5. It is true that the application seeking action under Sections 340 and 195 of Cr.P.C. was filed at a stage when the matter had reached the stage of recording of evidence and that there was no proposal by the defendants to examine the third party and naturally it was at a premature stage. It can only be inferred that Civil Judge, S.D.Baramati was of the opinion that action could be taken against two persons at the proper stage and at that stage enquiry under Section 340 of Cr.P.C. would be necessary as it would be expedient in the interest of justice. It cannot be said that the learned Judge had refused to take any action against the two persons who had intervened and filed affidavits. The documents filed by the plaintiff in

the form of medical certificate from the hospitals would be a relevant factor to decide as to whether the sale deed was executed by the father of the plaintiff in favour of defendant Nos. 1 and 2 after he was incapacitated due to Alzheimer and that could be decided on the basis of medical certificates.

6. In view of this, the Petition stands disposed of. The order dated 10.3.2015 passed by the Civil Judge, S.D., Baramati is only to the extent that the application could be considered at any future stage and in the eventuality that such an application is filed at any future stage, it would be considered on merits. With these directions, the Petitions stand disposed of.

(SMT. SADHANA S.JADHAV,J.)