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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3025 of 2017

Smt. Asha Pravin AhirePetitioner.
Vs
The State of Maharashtra & OrsRespondents.

Mr. Imtiyaz A.I. Patel, Advocate for the Petitioner.
Mr. Mukund Pise, Advocate for Respondent No. 2 to 5.

CORAM : SMT.BHARATI H.DANGRE, J.
7th March, 2018.

P.C. :

1 The present writ petition is filed by the petitioner, a widow who had approached the learned Judicial Magistrate, First Class, Khadki at Pune by making an application under Section 12 of Domestic Violence Act claiming right of residence in the disputed property which is a flat No.5, located at Moti Corner Building, Shantinagar, Yerwada, Pune. The applicant/present petitioner approached the Court claiming that she was residing in the said flat which belongs to her mother-in-law and her husband it was jointly purchased by them. After the demise of her husband, the petitioner along with her two children are residing in the said flat. On the demise of the mother-in-law, the respondents who are the sister-in-laws of the present petitioner, are claiming right in the said

property and attempted to dispossess the petitioner and have expressed their intention to dispose off the said property being the property belonging to their mother. Apprehending this contingency, the petitioner approached competent Court claiming restrain order which was granted on 29/4/2016 by the JMFC, Khadki at Pune and by the said order the respondents were restrained from evicting the applicant/present petitioner from the disputed flat without following due procedure of law.

The said matter was taken in appeal by the two sister-in-laws and their husbands before the Additional Sessions Judge, Pune by filing Criminal Appeal No. 242 of 2016. The Appellate Court being influenced by the statement made by petitioner in the proceedings before the Court that the forcible possession of the flat was taken by the respondents, arrived at a conclusion that the passing of protection order directing the appellants not to evict the applicant/respondent from the said flat has been rendered infructuous and the impugned order is not sustainable and in this backdrop remanded the matter to the learned Magistrate for consideration afresh. The said order was passed on 24/4/2017.

2 Being aggrieved by the said order the present writ petition is filed and this Court on 21/2/2018 was pleased to issue directions to both the parties to maintain status-quo.

3 On hearing the counsel of both the parties and on considering rival contentions, specifically, as to whether the petitioner and widow Shantabai Ahire was residing in the said flat, the documents which are produced on record, reveal that she was residing there along with her two children as some documents in the form of identity card are placed on record to demonstrate that she was occupying the said premises. It is not disputed by the learned counsel for the respondents that the respondents are married sister of the deceased husband of the present petitioner and they are living in their respective matrimonial houses.

4 The main issue, as to who is in possession of the said premises is a disputed question of fact and will have to be gone into after rendering evidence by both the parties and that is the reason why the Additional Sessions Judge, Pune has remanded the matter back to the Trial Court in April, 2017 and it is informed that the proceedings are going on before the Trial Court. In such circumstances, ends of justice would meet if the trial court is directed to expedite the trial, with cooperation of both the parties and since it is prima facie seen that the petitioner is residing in the said flat no.5 at Moti Corner Building, Shantinagar, Yerwada Pune along with two children, she may be permitted to occupy the said premises till the trial court record its finding. It is, however, made clear that the

petitioner will not create any third party rights, title or interest nor she will make any attempt to dispose of the said property. However, she will permit the respondents i.e. sister-in-laws of the petitioner to have visiting rights in the said flat whenever if they desire so.

5 It is made clear that the petitioner is permitted to occupy the said flat merely as an occupant and will not claim any equity nor she would leave the said flat and reside at some other place since it is the case of the petitioner that this is only the place of residence for her and her children. The respondents are also restrained from creating any third party rights in the said flat or alienate the same in any manner whatsoever till the final decision of the trial Court.

6 The JMFC Khadaki at Pune is directed to expedite the proceedings and conclude the same within a period of one year from today. It is made clear that the JMFC, Khadki Pune to proceed with the matter being uninfluenced by the observations made by this Court, which are of prima facie nature and this Court has not expressed any opinion on the tenability or the right of the rival parties.

7 Writ petition is disposed off in the above terms.

[SMT.BHARATI H.DANGRE, J.]