

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.188 OF 2018

Mahboob Amrullaha Shaikh	...Appellant
Versus	
Majidullaha Amrullaha Shaikh	...Respondent

Mr. B.P. Pandey I/by Mr. Vikas B. Pandey for the Appellant.
Mr. Dominic G. Rodrigues for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH SEPTEMBER, 2018.

P.C. :

1. Heard learned counsel for the appellant and the respondent.
2. This Appeal takes an exception to the order dated 24.08.2017 passed by the City Civil Court, Dindoshi, Mumbai, thereby allowing the Notice of Motion No.924/2016 filed in S.C.Suit No.2086/2014.
3. The said Notice of Motion was taken out by the respondent herein to restrain the appellant from dealing with the suit property in any manner whatsoever.
4. Respondent is the original Plaintiff, whereas the appellant is the Defendant. Respondent is the younger brother of the appellant and according to him, by virtue of the Gift Deed dated 08.04.2011 executed by the Appellant in his favour, he has 50% share in the suit property.

On the basis of the said Gift Deed, his name was also entered in all the records like the electricity bills, Shop & Establishment license etc. However, in the absence of the respondent, when he went away to abroad, the appellant removed name of the respondent from all the Government records and thereby denied the respondent's 50% share in the suit property. As a result thereof, the respondent was constrained to file the suit alongwith the Notice of Motion.

5. The appellant has admitted in his reply to the said Notice of Motion that, he has executed this Gift Deed and given 50% share in the suit property to the respondent. However, according to the appellant, it was done, subject to respondent giving his 1/3rd share to the appellant in the agricultural land situate in the native place. According to the appellant, he believed the representation made by the respondent and signed the documents brought by him. However, subsequently, the respondent withdrew from the representation made, and therefore, he was constrained to cancel his Gift Deed and remove the name of the respondent from the records of the suit property. According to the appellant, therefore, the respondent is no more having 50% share in the suit property and hence, the order passed by the Trial Court restraining the appellant from creating third party interest in the suit property is required to be set aside.

6. It is submitted by the learned counsel for the appellant that the appellant does not intend to create third interest in the suit property, by way of sale, transfer, mortgage or leave and license to any person without consent of the respondent. However, appellant intends to conduct the business in the suit property by appointing some Manager therein, and therefore, it is submitted that to that extent, modification in the impugned order passed by the Trial Court needs to be made.

7. At this stage, it becomes difficult to accept the case of the appellant that he does not want to create third party interest, but wants to run the business therein with someone else. When the appellant is admitting the execution of the Gift Deed and thereby admitting 50% share of the respondent in the suit property, then the appellant cannot be permitted to unilaterally deal with the property without consent of the respondent. Further, the learned counsel for the respondent has also pointed out that as in the absence of the respondent, the appellant has removed his name from the records, in respect thereof, FIR is lodged and charge-sheet is also filed in the Court for the offence punishable under Section 420, 465, 471 of the Indian Penal Code against the appellant. Thus, the Trial Court was justified in holding that the appellant cannot unilaterally deal with the property even by running the business therein, that too, not personally but with someone

else conducting the same, thereby to some extent creating third party interest.

8. The impugned order passed by the Trial Court does not call for any interference. Hence, the Appeal stands dismissed.

9. It is made clear that the above observations are made only for the purpose of deciding this Appeal and the Trial Court should not be influenced by them.

[DR. SHALINI PHANSALKAR-JOSHI, J.]