

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL (LDG.) NO. 435 OF 2018
IN
NOTICE OF MOTION NO. 1049 OF 2018
IN
SUIT NO. 121 OF 2015

Bharati Shashikant Patil.	...	Applicant.
In the matter between		
Bharati Shashikant Patil.	...	Appellant.
V/s.		
Pabhavati Sitaram Mhatre and others.	...	Respondents.

Mr.Manish Gaikwad i/b. Mr.E.A.Sasi for the applicant.

CORAM : A.S.OKA AND M.S.SONAK, JJ.

DATE : 10th October 2018.

P.C.:

The challenge by the appellant who is the original plaintiff is to the ad-interim order dated 28th June 2018 passed by the learned single Judge by which he declined to grant ad-interim relief as prayed for. The appellant-plaintiff has filed a suit for partition by claiming 1/8th undivided share in the suit property. Various reliefs have been claimed in Notice of Motion No.1049/2018 by the appellant-plaintiff. In paragraphs- 2 and 3 of the impugned order, the learned single Judge has observed thus:

“2. In any case it is clear in law that if the Plaintiff is found to have a share in any property and that property is

transferred without the Plaintiff's consent, the title to that extent will not fully pass.

3. This is sufficient and no orders of restraint are necessary.”

(underline supplied)

2. The learned single Judge has specifically observed that pending the suit, if the suit property is transferred without the consent of the appellant- plaintiff, the title to the extent of the share of the plaintiff will not fully pass. It sufficiently takes care of the apprehension of the appellant regarding respondents creating third party rights. If there is any change in the circumstances, the appellant- plaintiff can always apply before the learned single Judge in the pending notice of motion.

3. Considering what is observed in paragraphs-2 and 3 of the impugned order, no case is made out to interfere with the discretionary and equitable ad-interim order passed by the learned single Judge. We, however, make it clear that all contentions on the pending notice of motion and suit are kept open.

4. Accordingly, subject to what is observed above, appeal is disposed of.

(M.S.SONAK, J.)

(A.S.OKA, J.)