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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.38 OF 2018

Shraddha Bhavesh Sanghrajka and Anr.	... Appellants
V/s.	
Jitendra Maneklal Shah and Anr.	... Respondents.

Mr. Ashish Rao a/w Mr. H.S. Khokhawalla I/b. Nankani & Associates for the Appellants.

Mr. Vishal Kanade, Counsel a/w Mr. Vishal Thaker a/w Ms. Anjali Trivedi, Advocates I/b. V. Thakkers Advocates for the Respondents.

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

DATE : 7th SEPTEMBER 2018.

P.C. :

1 Heard the learned counsel appearing for the appellants. The appellants are the original first and second defendants. The appellants are aggrieved by an ad-interim order dated 16th November 2017 passed by the learned Single Judge on notice of motion taken out by the first and second respondents in the appeal who are the plaintiffs. The challenge in the suit filed by the first and second respondents is to the Gift Deeds executed by the second appellant in favour of the first appellant on the ground that the same are *void ab initio* illegal and unenforceable. The learned Single Judge by the ad-interim order directed the second appellant to deposit original gift deeds which are subject matter of challenge in the suit and directed that no further steps shall be taken on the basis of the impugned Gift Deeds. A copy of the impugned order was directed to be submitted to the Sub-Registrar of Assurances.

2 It is not in dispute that now the Notice of Motion for interim relief in which the impugned ad-interim order was passed is fixed for hearing on 11th September 2018.

3 The main grievance of the learned counsel appearing for the petitioners is that perusal of paragraphs 9 and 10 of the impugned order will show that even without granting an opportunity to file a reply to the Notice of Motion, the learned Single Judge has already recorded a prima facie finding. The submission is that this prima facie finding will come in the way of appellants raising appropriate contentions at the time of hearing the Notice of Motion.

4 We have considered the submissions. As observed earlier, the impugned order is only an ad-interim order pending the final disposal of Notice of Motion and now the Notice of Motion is fixed for final hearing on 11th September 2018.

5 When the Court considers the prayer for grant of ad-interim relief pending a Notice of Motion for interim relief, the object is to examine what protection should be granted to the plaintiff till the disposal of the Notice of Motion. An interim relief is required to be granted in the suit in the aid of the final relief and therefore, if hearing of the Notice of Motion is likely to take time, the Court is duty bound to consider the prayer for grant of ad-interim relief so that the very purpose of taking out Notice of Motion is not frustrated. While doing so, there is nothing wrong if the learned Single Judge records tentative and prima facie findings in

support of the ad-interim order which he proposes to pass. It is obvious that the said prima facie findings are only for the purpose of considering the prayer for ad-interim relief and the said findings do not bind the Court at the time of final hearing of the Notice of Motion. If the plaintiff by taking out Notice of Motion seeks urgent ad-interim relief, it is not necessary for the Court in every case to grant time to file a reply. It all depends upon the facts and circumstances of the case.

6 In the present case, considering the challenge to the execution of 13 Gift Deeds, the learned Single Judge has passed an ad-interim order directing production of the original Gift Deeds before the Court. The learned Single Judge has ensured that till the Motion is disposed of, no further steps are taken on the basis of the impugned Gift Deeds.

7 We find no perversity or illegality in the discretionary ad-interim order passed by the learned Single Judge.

8 Subject to what is observed above, there is no merit in the appeal and the same is accordingly dismissed. We, however, make it clear that Notice of Motion will be decided on its own merit in accordance with law.

(M.S. SONAK, J.)

(A.S.OKA, J.)