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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5428 OF 2019

Vaishali Pankaj Wagh

..Petitioner

vs.

Mangesh Pandurang Kuchekar & ors.

..Respondents

....

Shri U.P. Warunjikar for petitioner.

Shri A.M. Savagave for respondent No.1.

....

CORAM : M.S.KARNIK, J.

DATE : 17th SEPTEMBER, 2019

P.C. :

Heard learned counsel for the petitioner and learned counsel for respondent No.1.

2. The petitioner is the original plaintiff. The petitioner is the sister of respondent Nos. 1 and 2. It is the case of the petitioner that the properties mentioned in the Plaint are ancestral properties. The injunction is granted by the trial Court as confirmed by the Appellate Court restraining the defendants from creating any third party rights. In so far as property No.1B

is concerned, according to defendant No.1 it is self acquired property of defendant No.1.

3. Learned counsel for the petitioner invited my attention to the material averments in the Plaint as well as some other documents to contend that this property is also an ancestral property.

4. At the stage of deciding the application below Exhibit 5 as regards the property 1B not being an ancestral, is obviously a *prima facie* finding for the purpose of deciding the application below Exhibit 5. The suit in any case will be decided on the basis of the evidence which may be led by the parties and on its own merits without being influenced by the observations made in the orders passed by the Courts below.

5. Learned counsel for respondent No.1 on instructions fairly states that if respondent No.1 intends to create any third party interest and/or dispose of the suit property 1B, he will give advance notice of 15 days to the petitioner. The petitioner

thereupon may make a fresh application to the trial Court which shall be considered by the trial Court on its own merits and in accordance with law.

6. Learned counsel for respondent No.1 further states that as on today the property 1B has been mortgaged with 'Bharat Sahakari Bank'. However, it is made clear that no further charge will be created.

7. With these observations, the Petition is disposed of.

(M.S.KARNIK, J.)

Diksha
Rane

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