

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9668 OF 2018

Dama Dagadu Patil
(Since deceased through LRs.) ...Petitioner
vs.
Janibai Chandar Gavate ...Respondent

Ms. Preeti Walimbe, for the Petitioner
Mr. Rahul Shinde I/b. Mr. S.R. Bhise, for the Respondent

CORAM : M. S. SONAK, J.

DATE : APRIL 25, 2019

ORAL JUDGMENT

. Heard Ms. Preeti Walimbe, learned counsel for the Petitioner and Mr. Rahul Shinde, learned counsel for the Respondent.

2. The challenge in this Petition is to the order dated 15th June, 2015 made by the learned Appeal Court to the extent the same imposes partial restrain upon the Petitioner to deal with the suit property.

3. The Petitioner is the original Defendant and the Respondent is the original Plaintiff. The Respondent is the sister of the Petitioner. The Respondent has instituted the suit to question the

registered release deed in respect of the suit property. The learned trial Judge had in fact granted a blanket injunction against the Petitioner restraining him from alienating the suit property. The Appeal Court on 15th June, 2015 is however modified the blanket injunction and only restrained the Petitioner from disposing of 50% undivided rights in the suit property.

4. Ms. Walimbe, learned counsel for the Petitioner submits that the release deed executed by the Respondent and the same was also validly registered. She submits that virtually after six months, the suit has been instituted to disown the execution of the release deed or to otherwise attack the release deed which was voluntarily executed by the Respondent. She submits that two Courts have made strong observations to the effect that the Petitioner has failed to prove his case and the Respondent has almost established her case. She submits that such strong observations are bound to prejudice the Petitioner at the final disposal of the suit. Even otherwise, she submits that no case is made out even for even a partial restraint upon the Petitioner. For all these reasons, she submits that the impugned order is liable to be set aside to the extent it imposes partial restraint upon the Petitioner.

5. Mr. Shinde, learned counsel for the Respondent defends the impugned order on the basis of reasoning reflected therein. He submits that in fact a blanket injunction was required to be granted against the Petitioner. He submits that this Petition may be dismissed.

6. In the present case, two Courts have held against the Petitioner. The Appeal Court has in fact modified the blanket injunction granted by the trial Court and only required the Petitioner not to deal with the 50 % undivided right in the suit property. These are orders made at the interim stage and it cannot be said that discretion has been exercised unreasonably by the two Courts. Taking into consideration the parameters of interference as provided in the case of ***Wander Ltd. and Another V. Antox India P. Ltd. 1990 (Supp) Supreme Court Cases 727*** no case is made out for interference.

7. However, Ms. Walimbe is quite right in her submission that 2 Courts could have avoided making strong observations at interim stage. Court really concerned with maintenance of status quo and finding out whether a *prima facie* case is made out & the balance

of convenience in favour of grant of any interim relief. Therefore, at this stage, strong observations or finding which suggest some sort of conclusion are to be avoided.

8. This apprehension expressed by Ms. Walimbe can however be redressed by clarifying that none of the observations in the impugned orders shall be taken into consideration at the time of deciding the suit finally on its own merits and in accordance with law. Therefore it is clarified that none of the observations in the impugned order need or for that matter in the present order influence the learned trial Judge whilst deciding the suit on its own merits. The apprehension expressed, with this clarification really does not survive.

9. This Petition is accordingly disposed of by issuing aforesaid clarification but without interfering in the impugned order.

10. There shall be no order as to costs.

11. All concerned to act on the basis of authenticated copy of this order.

12. Since the suit is of the year 2011, the learned trial Judge to dispose of the same as expeditiously as possible.

(M. S. SONAK, J.)