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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8257 OF 2018

Mrs. Sarika Sham Aagale

..Petitioner.

V/s.

Bhujangrao Shankarrao Kenat & Ors.

..Respondents.

Mr.A.B.Tajane for the petitioner.

Mr.Anoshak Davar with Ritesh Jain i/b. M/s. M.J.Juris for the respondent Nos. 1 & 2.

CORAM : M.S.SONAK, J.

DATE : MARCH 19, 2019

ORAL JUDGMENT

Heard Mr. A.B.Tajane, learned counsel for the petitioner and Mr. Anoshak Davar, learned counsel for respondent Nos.1 and 2.

2. Mr.Tajane, learned counsel for the petitioner states that the remaining respondents have ben served and if affidavit service has been filed.

3. Mr.Tajane submits that in the present case, the plaintiff i.e. respondent Nos.1 and 2 claim their right, title and interest on the basis of the sale deeds executed in the year 1996 and 1998 respectively. These sale deeds were executed by father of the petitioner in favour of

respondent Nos.1 and 2. Mr.Tajane submits that the father of the respondents had in fact no right or authority to execute the sale deeds, since, this was a case of joint family property and even the petitioner was one of the co-parcenor. Mr.Tajane submits that the petitioner and her family members are in fact in possession of the suit property. He submits that the Appeal Court has also recorded a finding that the suit property was in fact ancestral property. Mr.Tajane submits that the sale deeds are neither legal nor valid or in any case the sale deeds cannot be said to be binding upon the petitioner. In these circumstances, Mr.Tajane submits that the trial Court and the Appeal Court have exceeded any jurisdiction in making the impugned orders and granting interim relief in favour of the plaintiffs i.e. respondent Nos.1 and 2.

4. Mr.Tajane points out that for the last two years, status quo is in operation. He submits that since the status quo is in operation for quite long time, it is just and proper the same is continued during the pending and the Civil Suit which may be ordered to be expedited.

5. Mr.Daver, learned counsel for the respondents defends the impugned order on the basis of the reasoning reflected therein. He points out the sale deeds registered in the year 1996 and 1998 were never challenged by the petitioner, assuming without admitting that the petitioner would have any *locus standi* to raise such a challenge,

particularly when the father is still alive. He points out respondent Nos.1 and 2 are in possession of the suit property in which they were undertaking the business of manufacture of bricks. He points out that now, respondent Nos.1 and 2 propose to set up an educational institution on the suit property and were in the process of constructing a compound wall, then the petitioner without authority of law offered resistance. Mr.Daver submits that the view taken by the Appeal Court is reasonable and, therefore, the same need not be interfered with in exercise of jurisdiction under Article 227 of the Constitution of India

6. The rival contentions now fall for my determination.

7. At the outset, it is necessary to record that this is a case where the petitioner seeks to challenge the concurrent orders made by the trial Court and the Appeal Court granting interim relief in favour of respondent Nos.1 and 2. Such orders by their very nature are discretionary and as long as it is not demonstrated that this discretion has been exercised unreasonably and arbitrarily, there is no scope for interference. It is also for the petitioner to demonstrate that the view taken by both the two Courts is contrary to the legal principles which apply to such matters.

8. Admittedly, the father of the petitioner by two sale deeds registered in the year 1996 and 1998 has sold the suit property in favour of respondent Nos.1 and 2. Till date, the petitioner has not

taken out any proceedings to challenge the said sale deeds. A mere statement in a suit instituted by respondent Nos.1 and 2 to the effect that the sale deeds are bad in law or that they are not binding upon the petitioner is really not sufficient to dispel the *prima facie* case made out by respondent Nos.1 and 2 on the basis of such sale deeds. There is really no material produced on record by the petitioner to show that he has possession in or over the suit property. Therefore, there is nothing wrong in the two Courts holding that respondent Nos.1 and 2 has not made out a *prima facie* case in their favour.

9. The contention based upon such property being a joint family property or ancestral property are not very clearly made out. In any case, leave might have been granted to challenge the sale deeds, however, till date there is no challenge to the sale deeds. Without challenging the sale deeds, the petitioner, obviously, cannot take law in his own hands and resist the work undertaken by respondent Nos.1 and 2 in or around the suit property.

10. In the case of *Wander Ltd. and Another V. Antox India P. Ltd.*¹ the Apex Court has observed that when it comes to interference with the discretionary orders made at the interim stage as under :-

“ The appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own

1 1990 (Supp) Supreme Court Cases 727

discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions....”

11. Applying the aforesaid principles in the present case, there is no case made out warranting interference with the impugned orders.

12. However, it is necessary to clarify that respondent Nos.1 and 2 might carry out the constructions at their own risk and without claiming equity. This means that if ultimately, respondent Nos.1 and 2 fail in their suit, then, they will have to abide by the orders that will be finally passed and not insists upon retaining the structure put up.

13. However, it is clarified that the observations in the impugned orders and also the observations in the present order need not influence the trial Court while disposing of the suit on merits. Accordingly, all contentions of the parties are left open for determination by the trial Judge at the stage of final disposal of the suit.

14. The trial Judge is requested to dispose of the suit as expeditiously as possible.

15. The writ petition is accordingly dismissed with the aforesaid clarification.

16. There shall be no order as to costs.

17. At this stage, Mr.Tajane, learned counsel for the petitioner prays for continuation of the ad-interim relief for a period of two weeks

from today. Ad-interim relief is continued for a period of two weeks from today.

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

(M.S.SONAK, J.)