

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 1073 OF 2019****WITH****INTERIM APPLICATION NO. 1 OF 2019****IN****APPEAL FROM ORDER NO. 1073 OF 2019**

Ms. Shireen Abdul Gaffar Khan

.....Appellant.

Vs.

Mr. Abdhul Gaffar Ragabullah
Khan & Ors.

.....Respondents.

Mr. A.A. Mirza for the Appellant.

Mr. Indu Tripathi i/by C.K. Tripathi for the Respondent Nos. 1 to 3.

Smt. Sadaf Maudar for the Respondent Nos. 4 to 6.

CORAM : A. S. GADKARI, J.

DATE : 9th DECEMBER, 2019.

P.C.:-

By the present Appeal, the Appellant-Original Plaintiff, daughter of Respondent No.1 has impugned Order dated 23rd October, 2019 passed in Draft Notice of Motion in S.C. Suit No. 2549 of 2019, by the learned Ad-hoc Judge, City Civil Court, Mumbai thereby refusing to grant ad-interim relief in terms of prayer clause (a) of Draft Notice of Motion.

2 Heard learned counsel for the Appellant. Heard Mr. Tripathi for the Respondent Nos. 1 to 3 and Smt. Maudar for the Respondent Nos. 4 to 6. Perused the record annexed to the Appeal.

3 The Appellant claims succession in the Suit property through her mother. The record indicates that, the Suit property was donated by way of gift to the mother of the Appellant Smt. Sugra Begum A. Gaffar by her father namely Mohammad Ayub Allauddin Khan by a registered Gift Deed dated 5th October, 2006. It appears that, there are differences between the Appellant- Plaintiff on one side and her father and brothers on other side over the Suit property and therefore, the Appellant has filed the aforestated Suit for partition. The Appellant has also taken out aforesaid Draft Notice of Motion in the said Suit for restraining the Respondents from creating third party right, title and interest in the Suit property, pending the decision of the said Suit. The Trial Court, by its impugned Order has refused to grant ad-interim relief in terms of prayer clause (a) of Draft Notice of Motion.

4 The record indicates that, the apprehension expressed by the Appellant is that, the Respondent Nos. 1 to 3 may create third party right, title and interest in the Suit property during the pendency of the said suit appears to be not well founded. The Trial Court has categorically observed that, in support of her apprehension about the creation of third party right, title and interest by the Respondent Nos. 1 to 3, the Appellant has not

disclosed, with whom the Defendants are likely to make transaction or the person with whom they are intending to enter into the transaction or who is the prospective purchaser of the Suit property. The finding recorded by the Trial Court appears to be a judicious finding and needs no interference by this Court in its Appellate jurisdiction.

The Notice of Motion filed by the Appellant is still pending for final adjudication.

5 In view of the above, I find no merits in the Appeal and is accordingly dismissed.

In view of disposal of Appeal itself, Interim Application No. 1 of 2019 does not survive, is also disposed off.

(A.S. GADKARI, J.)