IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 819 OF 2018

WITH
CIVIL APPLICATION No. 1059 OF 2018
IN
APPEAL FROM ORDER No.819 OF 2018

Smt. Lilabai Sudam Kalbhor ...Appellant /Applicant
Vs.
Ramchandra Shripati Parge and Ors. ...Respondents

Mr. Dhakephalkar, Senior Counsel i/b. Mr. S.V. Sadavarte for the Appellant/Applicant
Mr. Anil Anturkar, Senior Advocate a/w. Sandeep Phatak for Respondent Nos.1 to 14

CORAM : S.C. GUPTE, J.

DATE : AUGUST 30, 2019

P.C.:

1. This appeal from order challenges an order passed by the Court of Civil Judge, Senior Division, Pune, on an interlocutory application made in a Special Civil Suit. By the impugned order, the interim application of the Appellant (Original Plaintiff) for restraining Respondent No.1 to 13 (Original Defendant Nos. 1 to 13) and Respondent Nos. 17 (Original Defendant No.17) from creating third party interest in respect of the suit property described in the plaint was refused. The refusal was on the ground that the conduct of the Appellant, since beginning, clearly showed that she always had the intention of releasing her share in the joint family property in favour of Respondent Nos.1 and 2 and had even proceeded to do so by executing various documents including a power of

attorney and a release deed and that after a lapse of nearly 29 years, was contesting the purported release of her share.

2. The Court noticed that the Appellant had put her signature on the release deed in the office of the Sub-Registrar and accordingly, had prima facie relinquished her share in the joint family properties in favour of Respondent Nos.1 and 2. The contention of the Appellant that the Respondent Nos.1 and 2 being her elder brothers and having influence and dominance upon her, having assured her of acting in her interest and for her benefit by giving consideration of her share to the Appellant, had illegally procured her signature, was not accepted by the Court. The Court particularly noticed that from 2005 till 2017 , the Appellant had not taken any step or made any inquiry concerning non-payment of her share by the Respondents. The Court held that the Appellant had failed to make out any prima facie case; and that the balance of convenience was not in her favour. The Court noticed that the Appellant was basically seeking a temporary injunction restraining Respondent No.17 from creating any interest in respect of the suit properties with a view to protect her 11.25% share in the properties. The Court was of the view that if she succeeded in proving her share in the joint family properties, she would be entitled to that share from out of the consideration payable to the Respondents; it could not be said that if the injunctions were refused, the Plaintiff would suffer any irreparable loss.

3. There is no infirmity to be found in the impugned order. In the first place, the purported share claimed by the Appellant in the joint family properties is itself doubtful. Section 6 of the Hindu Succession Act, 1956, as substituted by the Hindu Succession (Amendment) Act, 2005, applies only in a case where the co-parcener and the concerned daughter were alive on the date of commencement of the Act, i.e. on 9th

September, 2005, irrespective of the date of birth of the daughter or co-parcener, who died thereafter. We may not, however, dwell upon this issue, since that was not really the subject matter for consideration before the Trial Court. As the record of the case indicates, there is preponderance of evidence before the Court that the Appellant not only had a clear intention of relinquishing her share in the suit property, such as the one she had, in favour of her brothers, Respondent Nos.1 and 2, but that she had actually taken steps in furtherance of that intent. The power of attorney, cancellation of which has been sought in the present suit, was executed as far back as on 16th July, 2006, whereas the release deed, which was a registered document relinquishing her right, was executed by her in 2011. The Appellant's case for avoiding these documents is that the Respondents had represented to her that the suit properties had to be mortgaged to a bank and that the release deed was obtained under the garb of a mortgage deed. Prima facie it is difficult to believe that the Appellant, who not only executed the document, but even admitted its execution before the Registrar, was defrauded into executing it by such a misrepresentation. Alternatively, it is claimed that the power of attorney and other documents were executed by her on an assurance that the respondents, in whose favour the documents were executed, would act in her interest and for her benefit and duly give consideration of her share to the Appellant. Whilst dealing with that case, the Court has correctly observed that the power of attorney was executed as far as back as in the year 2005; ever since its execution, the Respondent Nos.1 and 2 had entered into several transactions concerning the suit properties with third parties; the properties were developed and all along, that is to say, since 2005 and till 2017, the Appellant had stood by and not taken any step or even made any inquiry as to the consideration coming to her share. This made her case clearly unbelievable.

4. Mr. Dhakephalkar, learned Senior Counsel for the Appellant, submits that even if, on these facts, it were to be right not to grant any relief to the Appellant so far as the properties, which are under development, are concerned, at least for those properties, which are yet to be taken up for development, appropriate interim relief should have been granted. Even as regards these other properties, the circumstances of the case discussed above, which do not warrant any equitable relief for properties under development, are equally relevant and applicable except that there may not be any intervening third party interest created in these other properties. In any event, with a view to ensure that the development of the other properties goes on smoothly and the suit is expeditiously heard and taken to its logical conclusion, Mr. Anturkar, learned Senior Counsel appearing on behalf of Respondent Nos. 1 to 14, offers to keep a particular piece of land, bearing Survey No. 37/34, which is of an aggregate area of 77 ares open and not develop the same. Learned Counsel submits that this particular property shall be an adequate security so far as the Appellant's claim in the suit is concerned. Learned counsel submits that this would be without prejudice to the rights and contentions of his clients vis-a-vis the joint family status of the alleged properties or any other properties as purchases out of any common fund or income of the joint family properties. After taking instructions from his client, Mr. Sadavarte, learned counsel appearing for the Appellant, submits that the particular property is not adequate as a security for the Appellant's claim in the suit. Learned counsel submits that, in the first place, the particular plot of land, viz. Survey No. 37/34, is under reservation and secondly, there are communications addressed by Pune Municipal Corporation vis-a-vis that plot for surrender of amenities space. It is apparent from the sanctioned layout of the property, which forms a larger land, being Survey No.37, the particular plot bearing Survey No. 37/34, which is currently amalgamated with

some of the other sub-plots of Survey No.37 and which are shown together as plot No. F in the sanctioned layout plan, is not part of any amenity space. The amenity space sanctioned in the layout is outside plot No.F. As far the alleged reservation in respect of Survey No. 37/34, it does not prohibit development of the plot. The reservation is for high density housing, that is to say, it admits of even a larger development. There is no reason why this plot, offered by Respondent Nos.1 to 14 as a security, should not fit the bill. Mr. Sadavarte claims that another plot forming a part of the suit properties, viz. Survey No. 37/39, is also vacant and is more condusive as a security. Learned counsel submits that 40% area of this plot can be reserved as free from development with a view to secure the Appellant's right claimed in the suit. There is no apparent reason why this particular plot or portion of it as suggested by Counsel should be preferred over what is offered on their own by Respondent Nos.1 to 14 as security for the Appellant's claim.

5. The statement of learned counsel for Respondent Nos.1 to 14 vis-a-vis Survey No. 37/34, referred to above, is accordingly accepted. The Respondents shall not develop this particular plot or use its FSI or any FAR related to this particular plot, whilst developing plot No.F forming part of the sanctioned layout.

6. Subject to accepting this statement, the appeal from order is dismissed.

7. The Trial Curt is requested to dispose of the Special Civil Suit as expeditiously as possible, and preferably, within a period of one year from the date of this order being pointed out to the Court. Either party may produce an authenticated copy of this order before the Trial Court and seek directions for further hearing.

8. In view of the disposal of the Appeal from Order, the Civil application does not survive and the same is also disposed of.

9. At the request of Mr. Sadavarte, this order shall come into effect after expiry of four weeks from today.

[S.C. GUPTE, J.]

V.A. Tikam