

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

**APPEAL FROM ORDER (ST.) NO. 29482 OF 2019
WITH
INTERIM APPLICATION NO. 01 OF 2019
IN
APPEAL FROM ORDER (ST.) NO. 29482 OF 2019**

Alka Ashok Singh	...	Appellant
V/s.		
Jyoti Ramesh Singh & Anr.	...	Respondents

Mr.B.S. Shukla for Appellant.

Mr.V.S. Kapse i/b. Mr.Nikhil Rajeshirke a/w. Mr.Kunal Rane for Respondent No.1.

CORAM : A.S. GADKARI, J.

DATE : 8th January 2020.

PC. :

1] By the present Appeal under Order 43 of the Civil Procedure Code, the appellant-plaintiff has impugned Order dated 19th October 2019 passed in Notice of Motion No.4216 of 2018 in Suit No.2805 of 2018, dismissing the said Notice of Motion.

2] Heard Mr.Shukla, learned counsel for the appellant and Mr.Kapse, learned counsel for the respondent No.1. Perused the entire record annexed to the appeal.

3] The appellant has filed the aforestated Suit for partition of the suit property described in schedule annexed to the plaint contending that, the said property was acquired by her deceased mother and the appellant along with other two sisters are entitled to inherit the same. That the appellant and the respondents are having $1/3^{\text{rd}}$ share each in the suit property.

4] The appellant filed aforestated Notice of Motion in the said suit seeking temporary injunction restraining the respondent No.1 from creating third party right, title or interest in the suit property i.e. Flat No.104, admeasuring 410 square feet, situated at 'B' Wing, Mayur Residency Co-operative Housing Society, CTS No.217 and 217/1, Bhandup (West), Mumbai-78. As noted earlier, the learned Trial Court by its impugned Order dated 19th October 2019 has dismissed the said Notice of Motion.

5] Mr.Shukla, learned counsel appearing for the appellant submitted that, during the pendency of the hearing of the said Motion, the learned Advocate for the respondent No.1 had made a statement that, the respondent No.1 will not create any third party right, title or interest in the suit property and the said statement may be continued by directing the Trial Court to expedite the suit. He submitted that, there is a 'Gift-Deed' dated 4th September 2017 which is a manufactured document by the respondent No.1 and the appellant is likely to file a suit challenging the said 'Gift-Deed'. He submitted that, if the said Gift-Deed is held to be, not a genuine document, in that event,

the appellant will be entitled for 1/3rd share in the suit property. He therefore submitted that, the impugned Order may be set-aside by allowing the present appeal.

6] Per contra, Mr.Kapse, learned counsel for the respondent No.1 vehemently opposed the appeal and submitted that, the respondent No.1 had helped her mother, namely, Smt. Sarladevi Ashok Singh, financially in purchasing the suit property. He submitted that, it is the reason the name of the respondent No.1 is incorporated in the agreement of purchase of the suit property dated 17th September 2010, as a joint owner and therefore in the said agreement, the respondent No.1 is shown to be 50% owner of the suit flat. As far as the balance 50% ownership in the suit flat is concerned, Smt.Sarladevi Ashok Singh, the mother of appellant and respondents, by a registered Gift-Deed dated 4th September 2017 gifted her 50% ownership rights in favour of the respondent No.1 and the respondent No.1 has become owner of the entire flat. He submitted that, there are no merits in the contentions raised by the learned counsel for the appellant and therefore, the appeal may be dismissed summarily.

7] Perusal of record would indicate that, Smt. Sarladevi Ashok Singh, i.e. the mother of the appellant and respondents, had purchased the suit property from the builder by way of a registered agreement for sale dated 17th September 2010 after making full consideration in that behalf. It is the specific

and categorical contention of the respondent No.1 that, she helped her mother financially in acquiring the suit property and therefore, her name is incorporated in the agreement as joint owner of the suit property. The record further indicates that, by a Deed of Gift dated 4th September 2017, the mother of appellant and respondents had gifted her 50% share in the suit flat in favour of the respondent No.1.

8] As noted earlier, the said Gift-Deed is a registered document. The respondent No.1 thus has become owner of the suit premises. Contrary to this, the appellant has failed to bring on record any material to indicate that the documents brought on record by the respondent No.1 are not genuine. The facts clearly indicate that, the appellant has failed to make out any *prima-facie* case. Balance of convenience does not lie in favour of the appellant. No irreparable loss or harm would be caused to the appellant if injunction is not granted in her favour.

9] There are no merits in the Appeal. Appeal is accordingly dismissed.

10] In view of dismissal of the Appeal, nothing survives in the Interim Application and is accordingly disposed off.

[A.S. GADKARI, J.]