

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2907 OF 2019**

Ranjana Gangaram Dhondkar ...Petitioner

Versus

Savitrabai Dharma Dhoondkar & Anr. ...Respondents

Mr. Prathamesh Bhargude, with Mr. Sumit Sonare, for the
Petitioner.

Mr. Shriniwas Singh, for Respondent Nos. 1 and 2.

CORAM: Smt. Bharati Dangre, J.

DATED: 20th December 2021

P.C.:-

1. Heard the learned Counsel for the Petitioner and the learned Counsel for the Respondents. The Petitioner is aggrieved by the concurrent finding recorded by the learned Civil Judge Junior Division, Junnar passed below Exhibit 5 in Regular Civil Suit No. 201 of 2018 as well as the order passed by the learned Ad-hoc District Judge, Khed-Rajgurunagar, Pune on 29.09.2018 in Miscellaneous Civil Appeal No. 16 of 2017, when the earlier order is confirmed.

2. It is pertinent to note that the Regular Civil Suit is filed

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in the year 2010 and the first order below Exhibit 5 was passed on 18.03.2017, whereas the order by the Appellate Court was passed on 29.09.2018. The position as such, as determined by the learned Ad-hoc District Judge on 29.09.2018, continue to remain in force till this Writ Petition is heard.

3. The Counsel for the Petitioner has invited my attention to the order passed below Exhibit 5, where the learned Trial Judge has failed to consider the well settled parameters while dealing with the application below Exhibit 5 by recording a prima facie case and strangely by referring to a pending Regular Civil Suit No. 46 of 2008, the observation of the learned Judge is that in order to avoid contradictory finding in the present suit and the earlier suit filed by the Defendants seeking partition, he has not recorded any finding. Another reason, from which it can be inferred that the learned Judge has faulted, is when on bare reading of the plaint, he has recorded that in the application (Exhibit 5), the Plaintiff has suppressed material fact as to the pendency of Regular Civil Suit No. 46 of 2008, in respect of the suit property.

That finding cannot be sustained, in view of a specific clause contained in the form of 'cause of action' wherein the Plaintiff had disclosed that the Defendants had filed Regular Civil Suit No. 46 of 2008 and it is pending.

I can only observe that the learned Judge has failed to exercise his power while deciding the application for temporary injunction (Exhibit 5) and has rejected it perfunctorily.

4. I have carefully gone through the order passed by the Appellate Court which concur with the finding of the First Court but on a careful reading of the Appellate Court order, the learned Ad-hoc District Judge has considered the prima facie case as well as balance of convenience and he also made an attempt to determine the effect of the earlier suit which is pending in which partition is claimed by recording that, the Defendant Keshav Dhondkar has filed Regular Civil Suit No. 46 of 2008 seeking relief of partition and separate possession of five landed properties and in that suit the present suit property bearing Gat No. 517 is also mentioned. It further recorded that during the pendency of the said suit, plaintiff and others have purchased the property from Dharma Dhondkar, the Defendant in the first suit. The observation made by the learned Judge in paragraph 2, persuaded him not to grant injunction in favour of the Applicant, since he recorded that in Regular Civil Suit No. 46 of 2008 it is pleaded that the suit properties were ancestral properties of the Plaintiff and the Defendants. In the wake of this aforesaid statement, it was necessary on the part of the Plaintiff to show that the possession of the suit property was handed over to

her on the basis of sale deed and by recording a finding that since the property was a joint family property, her predecessor Dharma Dhondkar had no right to execute the sale deed in respect of the said property since the property was not partitioned. Recording the prima facie finding that the suit property is joint family property of Dharma and the Defendants and the Plaintiff in the subsequent suit will have to be governed by the doctrine of *lis pendens*, the relief that is sought by way of Exhibit 5 is rejected, though on a line of reasoning quite distinct from the one which has been adopted for by the learned Trial Court. The Appellate Court has, therefore, considered the case of the Plaintiff by applying the parameters of temporary injunction, being prima facie case, balance of convenience and irreparable loss.

5. I am not inclined to interfere in the said order, firstly the same being a properly reasoned order, depending on the facts of the case, and secondly, for it continue to stand since 29.09.2018. Since the Regular Civil Suit in which injunction is sought is filed in the year 2010, I deem it expedient to request the learned Civil Judge Junior Division, Junnar to conclude the proceedings in Regular Civil Suit No. 201 of 2010 within a period of six months from today.

6. Needless to state that the parties shall render their cooperation to the learned Judge in disposing of the said

proceedings.

7. Needless to state that the observations made by the Appellate Court as well as this Court should be taken only to be considered *qua* the decision on Exhibit 5 and will not affect the merits of the suit.

8. The Writ Petition is disposed of in these terms.

(Smt. Bharati Dangre, J.)