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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1193 OF 2022**

Smt. Anjana Shrihari Parande
Through Power of Attorney
Shri Jitendra Yashwant Dhende

.... Petitioner.

V/s

1 Laxman Ramchandra Satav
(since deceased through Legal Heirs)
a) Vishwas Laxman Satav and Ors.

..... Respondents.

Mr. Prathamesh Bhargude a/w Mr. Sumit Sonare and Mr. Ketan
Mandelacha for the Petitioner.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 08, 2022

P.C.:-

1] The Petitioner has questioned the order passed by the Civil Judge, Senior Division, below Exhibit-5 dated 18/12/2021 in Special Civil Suit No.591 of 2021, which was confirmed by the learned District Judge in Misc. Appeal No.110 of 2021, whereby prayer of the Petitioner/Plaintiff for grant of temporary injunction came to be rejected.

2] Facts necessary for deciding the present Petition are as under:-

3] Petitioner alleged that the suit property is an ancestral property. She and Defendant No.1 have share in the suit property. Accordingly, she initiated suit for partition, separate possession and declaration that conveyance *inter se* between the Defendants is not binding on her, questioning relinquishment deed dated 16/4/2016 bearing No. 1532 of 2016 and sought cancellation of the same. In the said suit, Petitioner moved an application-Exhibit-5 for temporary injunction with a prayer for order of temporary injunction during pendency of suit, restraining Respondents/Defendants from alienating, creating third party interest, changing nature and title of the suit property with direction to maintain status quo.

4] Prayer for grant of ad-interim injunction came to be allowed on 26/3/2021. However, by reasoned order, said prayer was rejected on 5/5/2021 and same was confirmed in Appeal vide order dated 18/12/2021. As such, this Petition.

5] Contention of Counsel for the Petitioner are, Plaintiff and

Defendant Nos. 1(a) to 1(c) are real brothers and sisters with common nucleus deceased Laxman. It is claimed that deceased Laxman has purchased the suit property out of joint family earning. It is claimed that during his life time, deceased Laxman sold the land admeasuring 135.78 sq. mtrs out of his share from land bearing Survey No. 40/1B/1o of village Kharadi to one Prabhavati Gopal Allahat. It is claimed that deceased Laxman and his brothers Vitthal and Waman jointly decided to enter into development agreement in respect of the land to the extent of 56.48 Ares with Respondent No.2 out of his share. It is claimed that deceased Laxman, his said brothers along with Prabhavati Gopal Allahat who was purchaser of part of the property to the extent of 135.78 sq. mtrs entered into development agreement with Defendant No.2 on 2/2/2006. It is further submitted that Power of Attorney was got executed by Defendant No.2 alongwith Development Agreement dated 2/2/2006 and instead of honouring it, Sale Deed was got executed, which is a subject matter of the challenge in the suit, claiming that Sale Deed is not binding on the Plaintiff to the extent of her share. Sale Deed dated 19/4/2008 got executed by Defendant No.2 is based on Power of Attorney given in his favour. It

is claimed that on 16/4/2016 release deed was executed in between Plaintiff and Defendant Nos. 1(a) to 1(c) and Plaintiff claimed to have restricted her exclusive right over the land admeasuring 11.56 Ares out of Survey No.40/2B/1, whereas she has relinquished her rights in other properties. It is claimed that Mutation Entry ought to have been carried out based on the said relinquishment deed, which Defendants have failed to. As a consequence, challenge is raised to the said relinquishment.

6] In the aforesaid backdrop, contentions are, legitimate share of the Plaintiff in the suit property is tried to be grabbed by Defendants, thereby bye-passing the legitimate claim of the Petitioner/Plaintiff, which has led to filing of the Interim Application.

7] Counsel for the Petitioner while questioning both the orders would urge that, at the relevant time, when release dated 16/4/2016 was executed, what was promised was 11.56 Ares land and in the absence of any Mutation Entry in favour of the Petitioner. Fact remains that by the conduct of parties, Plaintiff and Defendants have

not acted upon such relinquishment deed. It is further claimed that intention of the property being given to Defendant No.2 is for the purpose of development and not to create any exclusive ownership. According to her, Defendant No.2 based on the Power of Attorney by misusing the same has got the title vested in himself by executing Sale Deed which prima facie speaks of malafide intention of Defendant No.2. Drawing support from the judgment of of the Apex Court in the matter of *Vineeta Sharma vs. Rakesh Sharma* and Others reported in **(2020) 9 SCC 1**, it is claimed that Petitioner has every right to succeed to the interest of her deceased father and as such there is strong prima facie case in her favour based on the provisions of Section 6 of the Hindu Succession Act. It is claimed that if injunction is not granted Respondents/Defendants will create third party interest and will destroy original nature of the property. In addition, contentions are, Defendant No.3 is bent upon not only to develop the property but also to create third party interest and as such it is necessary to grant temporary injunction.

8] I have appreciated the said contentions.

9] As far as judgment in the matter of *Vineeta Sharma* cited supra is concerned, daughter's right in the coparcenary property under Section 6 of the Hindu Succession Act is very much identified. Daughter's claim is brought on par with that of other male members in the family. In the aforesaid backdrop, if we appreciate the contentions of Counsel for the Petitioner, what can be noticed is, thrust of the relief claimed in the form of temporary injunction is particularly against original Defendant No.3. Suit, so also Application for temporary injunction is pursued through Power of Attorney. Fact remains that Defendant No.3 has purchased part of the suit property i.e. Survey Nos. 40/1B/1 and 40/2B/1 to the extent of 5328 sq. mtrs and 10455 sq. mtrs respectively from the erstwhile owners under registered instruments. Before purchasing the property, appropriate public notices were issued and Defendant No.3 has received peaceful possession of the said property as reflected from the contents in the Deed of Conveyance dated 2/12/2019.

10] Both the Courts below so as to find out entitlement of the

Petitioner so as to succeed to the property of her late father Laxman looked into the source and noticed that claim of the Petitioner that her father has purchased the property from Hindu Joint Family income is specifically pleaded. It appears that deceased Laxman purchased the property vide Sale Deed dated 20/8/1962 in his individual capacity and not from income of joint family. The recitals in the Sale Deed reflect that deceased Laxman was of 35 years on the date of purchase of the said property and accordingly Mutation Entry was effected in his name. As such, it was for the Petitioner/Plaintiff to demonstrate that suit property was purchased by deceased Laxman out of the income of the joint family property. Apart from above, act of the Petitioner to relinquish her right in the ancestral property under registered release deed dated 16/2/2016 has to be taken into account. As nothing contrary is demonstrated as regards alienation of suit property, development agreement dated 2/2/2006, so also execution of Power of Attorney vide registered document, same has very much prompted both the courts below to accept that documents were duly executed after consideration was received. Fact remains that before suit was filed, Petitioner /Plaintiff was not in possession of the

property. Apart from above, what can be noticed is, there is unexplained delay in preferring the suit, as the Deed which was executed in favour of Defendant No.2 by deceased Laxman and the the Deed which was in turn executed by Defendant No.2 in favour of Defendant No.3 are challenged without there being any explanation to the delay. In the aforesaid backdrop, view expressed by both the courts below while concurrently holding that the Petitioner is not entitled for temporary injunction appears to be quite justified. Reliance drawn by the Petitioner in the matter of *Vineeta Sharma* cited supra will be hardly of any significance in the facts and circumstances of the case.

11] Petitioner has failed to demonstrate prima facie case. As such, Petition lacks merit and same stands dismissed.

(NITIN W. SAMBRE, J.)