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INTERIM APPLICATION NO. 1986 OF 2022

TREEZA EDGARD D'SOUZA AND ANR. .RESPONDENTS

DATE : JULY 22, 2022.

2. The respondent no.1 herein is the original plaintiff. The plaintiff instituted the suit for partition and separate possession. Two properties were subject matter of the partition suit being CTS Nos. 2030 and 2032. The plaintiff filed an application (Exhibit 5) for injunction. The trial Court

by an order dated November 11, 2021 passed below Exhibit 5 in Special Civil Suit No. 197 of 2021 granted injunction in favour of the plaintiff, thereby the petitioners (defendant nos. 1 to 4) and/or their agents are temporarily restrained from carrying out any further construction over the suit property till disposal of the suit. The other reliefs claimed in paragraph 16 of Exhibit 5 application are rejected.

3. Against this order the Misc. Civil Appeal was filed. The Principal District Judge, Thane at Thane, by the impugned order, dismissed the Misc. Civil Appeal. Hence this writ petition.

4. It is the contention of Mr. Sawant, learned counsel for the petitioners that in CTS No. 2030, there was a residential premises (apartment) which is the exclusive property of the petitioners – original defendants over which the respondent no.1 – plaintiff has no right. This position is contested by Mr. Patil, learned counsel appearing on behalf of the respondent no.1 – plaintiff. Mr. Patil submits that both the Courts below on the basis of the materials are justified in passing the orders which has resulted in allowing the application (Exhibit 5) for injunction in favour of the plaintiff.

5. After the matter was argued for some time, I had indicated to the parties that as they are closely related to each other and as the defendants were residing in the apartment which was constructed on CTS No. 2030, to find

out a workable solution during the pendency of the suit. The parties have adopted a reasonable approach. Mr. Patil, on behalf of the respondent no.1 – original plaintiff fairly submitted that what his client ultimately wants is her 1/3rd share in the suit property which is the subject matter of the decision in the pending suit. It is further not disputed that the petitioners – original defendants were residing in the apartment.

6. Over a period of time, the apartment became dilapidated and therefore, repair permission was made on behalf of the petitioners to the Mira Bhayandar Municipal Corporation. Mr. Patil, however, submitted that in the garb of repairs, the petitioners are intending to carry on new construction. I do not wish to express any opinion at this stage as these are the matters for the Municipal Corporation and its officers to deal with in the first instance. Suffice it to observe that any repairs/constructions that is to be put up by the petitioners has to be in accordance with the extant law applicable in this regard. Mr. Sawant submits that the construction that is being carried out is in accordance with the permission granted and no unauthorized activity of any kind will be carried on. Statement is accepted.

7. On behalf of the petitioners, petitioner nos. 3 and 4 are personally present in the Court. They are identified by Mr. Sawant. The respondent no.1 is personally present in the Court, who is identified by Mr. Patil, learned advocate.

8. The petitioner nos. 3 and 4, on their behalf as well as on behalf of the petitioners filed a pursis duly signed by the petitioners in presence of Mr. Sawant. The same is also signed by the respondent no.1. Respective advocates have signed the pursis for the purpose of identification and have no objection if during the pendency of the proceedings before the trial Court, the arrangement in terms of the pursis will operate. Pursis is taken on record and marked 'X' for identification. To that extent the order passed below Exhibit 5 is modified.

9. In terms what is stated in the said pursis, the parties agree that so far as 1/3rd share of the total built up area upon the CTS No. 2030, upon its restoration in accordance with the permission shall be kept vacant, as stated in clause 1 of the pursis, during the pendency of the suit before the trial Court. Such 1/3rd portion in the restored/repaired/reconstructed structure shall be in *custodia legis* of the trial Court. Appropriate modalities thereon be worked out by the trial Court in that regard. Parties to cooperate.

10. So far as clause 2 of the pursis is concerned, learned advocate for the petitioners, on instructions of the petitioners, submits that the petitioners do not intend to carry out any activity in CTS No. 2032 as they are really not concerned with the said property. The order passed by the Courts below to the extent of CTS No. 2032, therefore, stands confirmed and shall continue to operate during the pendency of the suit. The writ petition, so far as the

findings as regards CTS No. 2032 is dismissed.

11. It is made clear that I have not made any observations on the merits of the matter and all contentions are kept open to be decided by the trial Court, uninfluenced by the observations made by the trial Court below Exhibit 5 application as well as that of the Appellate Court.

12. This arrangement which is to be operative during the pendency of the trial proceedings shall abide by the final orders that may be passed in the suit.

13. The writ petition is, accordingly, disposed of.

14. In view of the disposal of the writ petition, nothing survives for consideration in the interim application. The interim application is also disposed of. No order as to costs.

(M.S.KARNIK, J.)