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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 2807 OF 2022

BHASKAR SUKRYA JOSHI AND ANR PETITIONERS

V/s.

SHARDA RAM PATIL AND ORS RESPONDENTS

Mr. Rohan P. Surve Advocate for the Petitioners

Mr. Ashok T. Gade a/w Riya John a/w Mr. Navin Rathod Advocate for
the Respondents

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 13, 2022.

P.C.:

1) Respondents initiated R.C.S. No. 417/1999 thereby questioning
the validity of a registered Will executed by deceased Padubai on
19/09/1997.

2) Said Suit came to be dismissed resulting in Respondents taking
out R.C.A. No. 23/2020 pending on the file of Ad-hoc District Judge,
Kalyan. Prayer for grant of temporary injunction restraining
Petitioner-Defendant/Judgment-Debtor from alienating the Suit

property or the property which is mentioned in the Will came to be allowed vide order dated 04/05/2021. As such, this Petition.

3) Heard rival parties.

4) Fact remains that during pendency of the Suit, temporary injunction was not in operation.

5) It is claimed by Respondents-Plaintiffs that act of the Petitioner of alienating part of the Suit property during pendency of the Suit/Appeal has prompted them to take out an Application for injunction. Though it is claimed that if the Suit property is alienated, same will give rise to more complications, in case if the Appeal is allowed. I hardly see any significance of such contentions, particularly when Respondent-Plaintiffs have failed to discharge their burden of proving a fact that the Will was executed under suspicious circumstances.

6) The Trial Court in categorical terms framed the issue no. 1 casting burden on Respondent-Plaintiffs to prove an issue as to whether deceased Padubai was in mental and physical position to execute the Will. The Respondent-Plaintiffs have failed to discharge the said burden as they have not adduced evidence to that effect. As

such, Suit was dismissed.

7) Once on merit it is held that Respondent-Plaintiffs have failed to discharge their burden, in my opinion, Appellate Court committed an error in injuncting the Petitioner from creating third party interest.

8) There is hardly any material to infer that there exist prima facie case in favour of Respondent-Plaintiffs which entitles them for grant of temporary injunction during pendency of the Appeal. As such, order impugned dated 04/05/2021 passed by Ad-hoc District Judge-1, Kalyan granting temporary injunction the Petitioner from alienating the Suit property is hereby quashed and set aside. Said Application stands rejected.

9) However, it is clarified that alienation, if any, shall be subject to outcome of the Appeal.

10) Petition stands disposed of in above terms.

[NITIN W. SAMBRE, J.]