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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 5161 OF 2022

MR. SURESH KESHAV SHIRKE AND ORS

....PETITIONERS

V/s.

RESHMA MAHENDRA INDULKAR AND ORS

.....RESPONDENTS

**Dr. Uday P. Warunjikar i/b Vaishnavi M. Gujarathi Advocate for
Petitioners**

Mr. B. K. Bali i/b Bali Associates for Respondents

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 27, 2022.

P.C.:

1) Heard Dr. Warunjikar, counsel for the Petitioners-original Plaintiff. Suit No. 381/2012 is for partition and separate possession at the behest of Petitioner in which vide order dated 07/08/2012 passed on Notice of Motion No. 459/2012, Respondents have suffered following injunction.

“The Defendant does not desire to dispose of the suit property. Notice of Motion is made absolute in term of prayer (a)” – Pending the hearing and final disposal of the Suit, the Defendant his servants and agents and family members be restrained by an order and injunction of this Hon’ble Court from transferring, alienating and/or dealing with Suit premises or any part thereof in favour of any, third party in any manner whatsoever.”

2) According to him, Application-Exhibit-30 moved by Defendant No.3 for return of the share certificate No.23 issued by the Kannamwar Nagar Sukhshanti Co-operative Housing Society Limited is allowed contrary to the above referred order of this Court. He would further urge that as a consequence of the order impugned, order of the High Court referred to above stood modified and the Defendant/Respondent No.3 herein is likely to take undue advantage of incorporation of her name in the share certificate.

3) While countering aforesaid submissions, counsel for Respondent-Defendants would urge that order impugned does not in any way violates order of this Court dated 07/08/2012 referred supra. He would further claim that order dated 07/08/2012 is complied with till this date and shall be complied in future in its true

letter and spirit. According to him, it is only for the administrative convenience at the society level, names of Respondent-Defendants are mentioned in the share certificate.

4) Petitioner/Plaintiff initiated suit for partition and separate possession of the aforesaid property. The fact that Defendant No.3 is in possession of the suit property is not in dispute and as such for day-to-day handling of the affairs of the said property, she needs to communicate with the Co-operative Housing Societies can also be inferred. As such communication by Defendant No.3 is subject to restrictions ordered by this Court while disposing of Notice of Motion No. 459 of 2012 referred to above. The name of Defendant No.3 is permitted to be incorporated in the share certificate, subject to outcome of the suit and same is by virtue of operation of law in view of death of original Defendant. As such, having regard to provisions of Order 22 Rule 3, being legal heir, name of Defendant No.3 is rightly permitted to be incorporated in the share certificate.

5) In that view of the matter, no case for interference is made out. Petition fails and same stands dismissed.

6) However, claim put forth by Respondent No.3 that she has

conducted till this date and shall continue to conduct in compliance with the order dated 07/08/2022 passed in Notice of Motion No.459 of 2012 is taken note of. It is further clarified that said Defendants shall not deal with the suit property without leave of the Court below.

7) Petition stands disposed of in the above terms.

[NITIN W. SAMBRE, J.]