

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9089 OF 2022

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Balaram Maruti Mundhe ... Petitioner
V/s.
 Shevantibai Dashrath Mundhe and Ors. ... Respondents

Mr. Tushar Sonawane a/w Ms. Pooja Satpute a/w Mr.
Shubham Bhdhwant for the Petitioner.

Mr. Vivek B. Rane i/b Vijay Killedar for the
Respondents.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 29, 2023

P.C.:

1. The petitioner is original plaintiff who filed suit for partition and separate possession. During pendency of the suit, defendants created third party rights in favour of defendant Nos. 18 to 22. The petitioner, therefore, filed an application before the Trial Court seeking injunction against third party purchasers from carrying out construction over Gat No.22/2A and Gat No.45/1B. Additional prayer of not to create third party rights in relation to both the properties is prayed. The Trial Court and Appellate Court rejected the application holding that the petitioner has failed to prove prima facie case. Prima facie, it appears that the Courts below rejected the application recording a finding that construction is

already completed. However, the second part of the prayer has not been properly considered by the courts below.

2. It appears that the petitioner is claiming share in the suit property. The respondent Nos.18 to 22, are the purchasers during the pendency of the suit. Therefore, unless rights of the plaintiffs are conclusively adjudicated in the suit, the petitioner are entitled to relief of injunction restraining defendant Nos.18 to 22 from creating third party rights. Hence following order:

a) The judgment and order passed by the Appellate Court dated 12th April 2022, in Miscellaneous Civil Appeal No.73 of 2021 passed by District Judge Kalyan confirming judgment and order dated 29th November 2021, passed by Civil Judge in Regular Civil Suit No.235 of 2014 is modified to the extent of respondents Nos. 18 to 22 are restrained from creating third party rights over Gat No 22/2A and Gat No.45/1B till the disposal of the suit.

3. The writ petition stands disposed of.

(AMIT BORKAR, J.)