

SA Pathan

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

WRIT PETITION NO.6343 OF 2023

**WITH
INTERIM APPLICATION NO.13841 OF 2023
IN
WRIT PETITION NO.6343 OF 2023**

**WITH
INTERIM APPLICATION NO.13840 OF 2023
IN
WRIT PETITION NO.6343 OF 2023**

Pushpa Namdev Dhattrak & Ors ... Petitioners
V/s.
Subhash Namdeo Karad & Ors ... Respondents

Mr. Sanjay Anant Ghaisasm for Petitioners/Applicants.

Mr. Abhishek Pungliya, for Respondent Nos.1, 3 to 8 &
9 to 25.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 27, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, petitioners are original plaintiffs in a suit for partition challenging orders passed by the Courts below rejecting application for temporary injunction against defendants.

2. Petitioners filed Special Civil Suit No.281 of 2017 seeking partition and separate possession of the suit property. During

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pendency of the suit, petitioners applied for temporary injunction against original defendant Nos.1 to 8. The relief prayed in application below Exhibit 5 sought injunction restraining defendant Nos.1 to 8 from alienating suit property and creating third party rights over the suit property.

3. According to petitioners, suit properties are their ancestral properties. Petitioners have undivided their share of properties.

4. The Trial Court while deciding the application for temporary injunction recorded *prima facie* finding that petitioners failed to prove *prima facie* that they have share in the properties. The Trial Court, therefore, rejected the application for temporary injunction by order dated 26 October 2018.

5. Petitioners have not challenged order dated 26 October 2018, with the result said order attained finality.

6. Defendant Nos.1 to 8, have, therefore, created third party interest in relation to suit properties. Defendant Nos.1 to 8 created third party interest in favour of defendant Nos.9 to 25.

7. In the next round, the Trial Court allowed the application for temporary injunction on the ground that defendants are developing the suit properties. Defendants, therefore, challenged order of Trial Court dated 14 September 2022 by Miscellaneous Civil Appeal No.62 of 2022. The Appellate Court by order dated 13 March 2023 allowed the appeal of defendants on the ground that the earlier order rejecting temporary injunction application has become final which records *prima facie* finding that plaintiffs have failed to make out *prima facie* case.

8. In my opinion, the Appellate Court has rightly interfered with the Trial Court's order as earlier order of refusing temporary injunction against defendant Nos.1 to 8 had attained finality. No fresh documents were produced nor change in circumstances was pleaded on record to enable petitioners to seek relief of injunction against transferee pendente lite.

9. It is well settled that the transferee is entitled to rights and liabilities of his vendor. Due to rejection of earlier temporary injunction application, rights accrued to defendant Nos.1 to 8 stand transferred to transferees. Therefore, in absence of change in circumstances or fresh material, the application against transferees and original defendant Nos.1 to 8 has been rightly dismissed. I am of the opinion that the impugned judgment does not suffer from any legal infirmity.

10. The writ petition stands disposed of in above terms. No costs.

11. Considering the facts of the case, the Trial Court is directed to decide the suit as expeditiously as possible.

12. It is made clear that the observations made in the order are *prima facie* in nature which shall not influence the Trial Court while deciding the suit on merits.

13. In view of disposal of writ petition, nothing remains to be adjudicated in interim applications; hence, both the interim applications stand disposed of.

(AMIT BORKAR, J.)