

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 1024 OF 2022
WITH
INTERIM APPLICATION NO. 19573 OF 2022

Smt. Usha Mahadu Gadage

...Appellant

V/s.

Smt. Shakuntala Sudhir Manekar

....Respondent

Mr. Girish Godbole, Senior Advocate i/by. Mr. Kaustubh Thipsay, with Ms. Aishwarya Shinde, for the Appellant.

Mr. Kailas S. Dewal i/by. Mr. Yash Dewal and Mr. Sham Thakur, for Respondent No.34.

CORAM : SANDEEP V. MARNE, J.

Dated : 28 November 2023.

P.C. :

1. By this Appeal, the Appellants challenge order dated 1 August 2022 passed by the 6th Joint Civil Judge Senior Division, Kalyan rejecting Plaintiff-Appellant's application at Exhibit-5 seeking temporary injunction. Plaintiffs have filed Special Civil Suit No. 248 of 2021 *inter-alia* for partition of the suit properties. Plaintiffs are legal representatives of Kanhu Dharama Manerkar and Janhu Dharama Manerkar. Defendant Nos.1 to 3 are legal representatives of

Sitaram Dharma Manerkar. It is Plaintiff's case that Kanhu, Janhu and Sitaram were jointly cultivating the suit properties and therefore all three were required to be declared as Tenants. Reliance is placed on Mutation Entry No. 345 dated 21 August 1953 to contend that Sitaram alongwith three others were cultivating the suit land on 21 August 1953. It is based on this contention that the Plaintiffs have filed the suit for partition claiming a share in the suit properties. Defendant Nos. 1 to 29 have executed a registered sale-deed in favour of Defendant No.34 on 5 November 2018 in pursuance of which Defendant No.34 has developed the suit property. Plaintiffs have moved an application at Exhibit-5 for grant of temporary injunction to restrain Defendant No.34 from not creating any third party interest in the suit property and from carrying on any construction.

2. The Trial Court has proceeded to reject the application by order dated 1 August 2022 which is subject matter of challenge in the present Appeal.

3. I have heard Mr. Godbole, the learned Sr. Advocate appearing for the Appellant and Mr. Dewal, the learned counsel appearing for the Respondent No.34.

4. Perusal of the records would show that deceased Sitaram initiated proceedings under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act (**Tenancy** Act) and got the purchase price fixed in respect of the suit lands. Order under Section 32G of the

Tenancy Act was passed on 28 October 1961. Consequently, Certificate under Section 32M of the Tenancy Act came to be issued in favour of legal representatives of Sitaram after his death on 24 January 1990. Till date, the legal representatives of deceased, Kanhu & Janhu (who are Plaintiffs) have not instituted any proceedings seeking a declaration that they are Tenants in respect of the suit property. The order passed in favour of Sitaram under the provisions of Section 70(b) of the Tenancy Act on 28 October 1961 has not been questioned either by Kanhu or by Janhu or by their legal representatives till date. Till the Plaintiffs seek a declaration in the appropriate forum about their rights under the provisions of Section 32G of the Tenancy Act, *prima-facie* they cannot file a suit for partition. In my view, therefore the Trial Court has rightly rejected the application for temporary *injunction* against Defendant No.34 who is not only claims to be a bonafide purchaser but has virtually completed the entire construction. No error can be traced in the order passed by the Trial Court. Appeal bearing devoid of merits is rejected.

5. Needless to say that the observations made in the present order are only *prima-facie* for the purpose of determining the entitlement of Plaintiffs for temporary injunction. Neither the Trial Court or any other authority shall not be influenced by observations made in the present order.

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SANDEEP V. MARNE, J.