



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 45 OF 2019

Kiran Bhanudas Suradkar

Appellant

Versus

1. Bhanudas Dhondiram Suradkar
(Died) through legal representative

2. Wat Thai Ellora Bhaudha Guha
Trust, Aurangabad.

3. Prakash Bhanudas Suradkar

Respondents

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Mr. Ajinkya Reddy, Advocate for the appellant.

Mr. Avinash Lavharale, Advocate holding for Mr. Ajit B.
Gaikwad, Advocate for respondent No.2.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 01 APRIL 2024.

Order :

1. The appellant i.e. original plaintiff in Special Civil Suit No. 93/2018, has preferred this appeal challenging the order dated 26.07.2019 passed by the learned trial Court i.e. 7th Civil Judge (Senior Division), Aurangabad, whereby his application (Exh.5) for temporary injunction, has been rejected.

2. The appellant/plaintiff has filed the aforesaid suit for partition and declaration of Gift Deed executed by respondent No.1/defendant No.1 in favour of present

respondent No.2/defendant No.2 regarding the suit property, being void and illegal. Admittedly, the suit property i.e. Gut No.173 to the extent of 1 H 96 R situated at village Verul, Taluka Khultabad, District Aurangabad was self acquired property of the mother of plaintiff namely Minakshi Bhanudas Suradkar. After her death on 08.03.1992 the plaintiff and defendant Nos.1 and 2 became joint owners of the suit property. However, defendant No.1, who was the father of plaintiff/appellant, alone executed Gift Deed of the suit property in favour of present respondent No.2- Trust. As such, the appellant/plaintiff had filed application (Exh.5) for restraining respondent No.2-Trust from alienating and changing the nature of the suit property.

3. Learned Counsel for the appellant vehemently argued that there is no dispute about the fact that the plaintiff alongwith defendant Nos.1 and 3 being legal representatives of deceased Minakshi Suradkar, became joint owners of the suit property. However, defendant No.1 i.e. father of plaintiff had executed the Gift Deed by ignoring shares of plaintiff as well as defendant No.3 which is *prima facie* illegal. According to him, temporary injunction was claimed only for not to alienate or change nature of the suit

property, and therefore, the learned trial Court should have granted the same.

4. On the contrary, learned Counsel for respondent No.2-Trust, who appears to be sole contesting defendant, vehemently argued that the appellant/plaintiff was already aware about the intention of defendant No.1 i.e. his father of making Gift of the suit property to respondent No.2-Trust, and therefore, the said Gift Deed was in fact executed with consent of the appellant and respondent No.3. He pointed out that nothing is mentioned by the appellant/plaintiff in his application (Exh.5) about apprehension in respect of creating third party rights over the suit property. According to him, 16 Buddha Vihars are already constructed on the suit property and the Trust, without any permission of the Charity Commissioner, cannot transfer the suit property.

5. Heard rival submissions. Also perused the documents on record.

6. It is significant to note that the learned trial Court has rejected application (Exh.5) mainly on the ground that though the appellant/plaintiff and respondent No.3 i.e. his brother were having share in the suit property, but they were

knowing about the intention of respondent No.1 for making Gift of the suit property to respondent No.2-Trust and that there is nothing in the application itself that respondent No.2 Trust is going to dispose of the suit property. Admittedly, it has come on record that respondent No.2-Trust has already constructed 16 Buddha Vihars on the suit property. Nothing is pleaded by the appellant / plaintiff about any attempt on the part of respondent No.2-Trust for creating third party interest over the suit property. As such, even if it is *prima facie* evident that the appellant/plaintiff and respondent No.3 were also having share in the suit property, but no *prima facie* case is established by the appellant/plaintiff that respondent No.2 Trust was trying to dispose of the suit property by creating third party rights over the same. Moreover, respondent No.2-Trust has also contended that construction on the suit property is already over and at present no construction is in progress, on the suit property.

7. Further, it is important to note that the suit property cannot be transferred or modified without prior permission of the Charity Commissioner. Therefore, for want of pleading about the alleged act of respondent No.2-Trust of creating third party rights over the suit property, no

irreparable loss will be caused to the appellant/plaintiff. The facts on record clearly indicate that the appellant/plaintiff has not established *prima facie* case for securing the relief claimed by him in the application (Exh.5). As such, the observation of learned trial Court to that effect appears proper at this juncture. In view of the same, the appeal stands dismissed alongwith the pending Civil Application No.10726 of 2019 and the interim relief granted under the said application, also stands vacated.

(SANDIPKUMAR C. MORE, J.)