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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 564 OF 2023
WITH
INTERIM APPLICATION NO. 14320 OF 2024
IN
SECOND APPEAL NO. 564 OF 2023**

Rajaram Sopan Bodre

.....Appellant

Vs.

Tukaram Pandurang Gujale

.....Respondent

Mr. Siddharth Shitole a/w Mr. Avesh Ghadge for the applicant
Mr. Javeed Hussein, a/w Mr. Mubashir Hussein, Mr. Munibah Iram i/b
Hussein and Company for respondent nos. 1 to 4

IRESH
MASHAL

CORAM : GAURI GODSE, J.

DATE : 18th DECEMBER 2024.

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ORDER:

INTERIM APPLICATION NO. 14320 OF 2024:

1. Heard learned counsels for the parties. This application is preferred by the appellant seeking injunction restraining respondent nos. 1 to 4 from changing the nature of the suit property. Learned counsel for the applicants submits that construction is being carried out without the consent of the applicants and without obtaining

necessary construction permission.

2. Respondent nos. 1 to 4 have filed affidavit-in-reply to oppose the grant of any injunction. Learned counsel for respondent nos. 1 to 4 submits that the suit property is not yet divided and respondent no. 1 have an undivided share in the suit property. He further submits that defendant nos. 1 to 4 have executed the sale deed in favour of defendant nos. 5, 6 and 7. He submits that defendant nos. 1 to 4 had no right to create such third party interest when the plaintiffs also had a share in the suit property. He, however, does not dispute that defendant nos. 1 to 4 have right in the suit property. Learned counsel for the respondent nos. 1 to 4 therefore opposes grant of injunction as prayed by the applicant.

3. The appellant is original defendant no. 6. Respondent nos. 1 and 2 are the original plaintiffs, who had filed suit for partition and separate possession. Defendant nos. 5, 6 and 7 had filed written statement and counterclaim. The suit for partition as well as counterclaim was dismissed by the trial Court. Dismissal of the suit for partition and separate possession is not further challenged by the plaintiffs. Defendant nos. 4 to 7 filed the first appeal to challenge the dismissal of

their counterclaim. The first appeal is dismissed. Hence, the second appeal by defendant no. 6. The second appeal is admitted on 18th October 2024. Defendant nos. 4 to 7 claim right in respect of the suit property based on a registered sale deed executed by defendant no. 1. The sale deed in favour of defendant nos. 4 to 7 is not under challenge. There is no dispute that defendant no. 1 has right in the suit property. Thus, based on the unchallenged sale deed in favour of defendant nos. 4 to 6, prima facie, they also have an undivided share in the suit property.

4. Respondent nos. 1 and 2 i.e. original plaintiffs do not claim any exclusive ownership or possession in respect of the suit property. Hence, in the absence of any consent by all the co-owners, respondent nos. 1 to 4 cannot claim any right to change the nature of the suit property.

5. Learned counsel for the respondent nos. 1 to 4 relies upon the decision of the Hon'ble Apex Court in the case of ***Sakhahari Parwatrao Karahale and another Vs. Bhimashankar Parwatrao Karahale***¹. He submits that each member of a joint family is a co-sharer and possession of one co-sharer would amount to possession of all. He

¹ (2002) 9 Supreme Court Cases 608

therefore, submits that in view of the legal principles settled by the Hon'ble Apex Court, there cannot be any injunction against another co-sharer. The legal principles settled by the Hon'ble Apex Court is with regard to an injunction claiming exclusive possession. In the present case, the injunction is claimed restraining respondent nos. 1 to 4 from changing the nature of the suit property. Hence, the legal principles settled by the Hon'ble Apex Court would not apply to the prayers in the present application.

6. Respondent nos. 1 to 4 also do not dispute that there is no construction permission granted by any competent authority to carry out any construction on the suit property. In view of these circumstances, the appellant would be entitled to seek an injunction restraining respondent nos. 1 to 4 from changing the nature of the suit property.

7. Learned counsel for the respondent nos. 1 to 4 submits that respondents be permitted to carry out the construction as they have already undertaken in their affidavit-in-reply that they would submit to the final outcome of the second appeal.

8. I do not find any substance in the submissions made on behalf of

respondent nos. 1 to 4 as admittedly there is no construction permission obtained by respondent nos. 1 to 4 for carrying out any construction in the suit property. In the event any unauthorised construction is carried out, same would cause prejudice to the rights and contentions of the applicant. Hence, to avoid any multiplicity of proceedings, it is necessary to protect the nature of the suit property.

9. Hence, for the reasons stated above, interim application is allowed in terms of prayer clause (b) and (c). However, it is clarified that it will be open for respondent nos. 1 to 4 to follow appropriate procedure of taking permission in the event they intend to carry out any construction. In the event such permission is granted, liberty to respondent nos. 1 to 4 to apply for modification of this order.

10. At this stage, learned counsel for respondent nos. 1 to 4 submits that respondents be at least permitted to fix the doors to the construction that is already carried out. However, in the reply, no particulars are mentioned regarding the status of the construction carried out. Hence, at this stage, no clarification can be granted. However, respondent nos. 1 to 4 are at liberty to file appropriate application.

11. If any application is filed, the same shall be considered on its own merits.

[GAURI GODSE, J.]