

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL APPLICATION IN SA NO. 1323 OF 2019****WITH****SECOND APPEAL NO. 84 OF 2023**

Sudhir Puroshottam Khodake

...Applicant

Versus

Shashikumar Vishnu Khodake
(decd. Thru Lrs.)

...Respondent

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Mr. Ajay Joshi, a/w. Mr. Rahul Madan More for Appellant / Applicant.**Mr. Surel Shah**, a/w. Mr. Sagar Redkar i/b. Mr. Deepak Salvi for Respondent
No.11**Mr. Sandesh Patil**, a/w. Mr. Shashank Mangle for Respondent Nos.12 to 18.

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CORAM : SANDEEP V. MARNE, J.**DATED : 12 JANUARY 2024.****P.C. :**

The Interim Application is filed seeking stay of the impugned Judgment and Order passed by the Trial Court and the First Appellate Court. Plaintiff's claim before the Trial Court is premised only on the will dated 26 December 1956 executed by Vishnu Khodake. According to Plaintiff, the will bequeaths entire landed property to Purushottam and therefore Purushottam and his legal heirs (Plaintiffs) became sole and absolute owners in respect of the landed properties. On the contrary it was the defence of the Defendants that a partition was executed between the parties on 27 January

1962 on account of difficulty in interpreting will and the landed and house properties were accordingly partitioned. That in said partition no share was allotted in Purushottam in any of the landed properties. It is also case of the Defendants that partition was acted upon by Purushottam by dealing with and alienating some of the house properties allotted to his share in the partition. The Defendant therefore contended before the Trial Court that they have acted upon partition deed, it was not open for the Purushottam to take *volte face* and claim exclusive ownership in the landed properties basis Vishnu's will dated 26 December 1956.

2. The Second Appeal is admitted by formulating various substantial questions of law. It appears that during pendency of the present appeal, land bearing Survey No.157/2 came to be purchased by the tenant (Respondent Nos.12 to 19) from Purushottam Khodke under provisions of Section 64 of the Maharashtra Tenancy and Agricultural Lands Act. The land so purchased by the tenant has further been transferred in favour of the Respondent No.11-Developer. It appears that Plaintiffs did not amend suit to set up challenge to the transaction executed in favour of tenants or in favour of developer. Till today there is no challenge to the said transaction. It appears that in addition to land bearing Survey No.157/2 there are several other landed properties which still continue to be in ownership of the Sundarbai's branch. In that view of the matter it would not be prudent to impose any embargo on Respondent No.11 in dealing with land bearing Survey No.157/2 during pendency of the present Appeal.

3. Further so far as other suit properties (excluding Survey No.157/2) are concerned, it would be necessary for the members of the

Sundarabai's branch to maintain *status quo* in respect thereof during pendency of the present Appeal. I accordingly proceed to pass following order :

i) Respondent Nos.1 to 10 shall maintain *status quo* in respect of suit properties except land bearing Survey No.157/2.

ii) It is clarified that no interim order is granted in respect of land bearing Survey No.157/2.

4. With the above directions, Interim Application is disposed of.

SANDEEP V. MARNE, J.

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