

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 471 OF 2024

Sujata Ramesh Jadhav

.. Petitioner

Versus

Narayan Bhikaji Fulsundar and Ors.

.. Respondents

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- Mr. Tejas Deshmukh a/w. Mr. Harishchandra Chavan, Advocates for Petitioner.
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 17, 2024

P.C.:

- 1.** Heard Mr. Deshmukh, learned Advocate for the Petitioner.
- 2.** The Writ Petition impugns twin orders passed by the learned Trial Court dated 24.07.2023 and Appellate Court dated 19.09.2023 in proceedings pertaining to injunction rejecting the Application for injunction. The order dated 24.07.2023 passed by the Trial Court is at Exhibit-E, page No.78 of the Writ Petition whereas the order dated 19.09.2023 passed by the Appellate Court is at Exhibit-I, page No.144 of the Writ Petition.
- 3.** The suit as is seen has been filed six years back. It is at the stage of framing of issues. The grievance of Petitioner as can be seen after perusing the aforesaid two orders is restricted to the Petitioner being entitled to 1/7th share in the suit property of which partition is sought. There is an affirmative and categorical finding in paragraph

No.22 of the order passed by the Appellate Court that on perusal of the sanctioned plan of construction of Defendant No.1 qua the entire suit property which comprises of 1 hectare 56 Aars plus the property of 72 Aars being potkharaba field land, a substantial portion out of said suit property which is much more than 1/7th share which would enure to the benefit of Petitioner is in fact lying vacant and available on the spot as recorded by the Trial Court. In that view of the matter, giving adequate and cogent reasons the Trial Court and Appellate Court have refrained from accepting the plea of the Petitioner / Plaintiff for temporary injunction. The balance of convenience undoubtedly is even in the present case and no prejudice whatsoever therefore can be caused to the Petitioner / Plaintiff in such an event.

4. Both the orders passed by the learned Trial Court and Appellate Court are therefore sustained. Considering that the aforesaid suit proceeding is a partition suit between family members, at the request of Mr. Deshmukh, learned Trial Court is directed to determine and conclude the suit proceedings in Regular Civil Suit No.78 of 2018 preferably within a period of 18 months from today, strictly in accordance with law.

5. It is further clarified that as held by the learned Appellate Court in paragraph No.22 of its judgment and order in respect of 1/7th share in the suit property enuring to the benefit of Petitioner /

Plaintiff, the land which is now remaining vacant shall not be constructed upon by any of the parties to the suit until the suit proceedings is disposed of. It is further clarified that in so far as sanctioned plan of Defendant No.1 is concerned, the Defendant No.1 shall construct strictly in accordance with the sanctioned plan only and not any further.

6. With the above observations, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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