

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1932 OF 2024

Bebitai Dnyanoba Kalbhor

.. Petitioner

Versus

Dhanaji Namdev Gopale & Ors.

.. Respondents

-
- Mr. Onkar Gawade i/by Mr. Jaydeep Deo for Petitioner

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 23, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 23.07.2024.
3. Heard Mr. Gawade, learned Advocate for Petitioner.
4. By virtue of the impugned order dated 27.09.2023, learned Trial Court has rejected the Application filed by Plaintiff (Petitioner herein) below Exh. 250 under O. VI, R. 17 read with O. I. R. 10 of the CPC. Suit is originally filed for partition, injunction and declaration by the Plaintiff. However during the witness action, while leading the evidence in rebuttal, Defendant has disclosed a gift deed. By virtue of the said gift deed / transaction, Defendant has assigned and donated an undivided portion of the Suit property to some third party. Considering that the Suit is for partition, it shall be open to the Plaintiff to plead with respect to the subsequent transaction carried

out by Defendant with respect to the undivided share in the Suit property. Keeping all contentions of the Plaintiff expressly open at the time of final arguments, considering the principal reliefs in the Suit proceedings, unless and until partition is effected, the subsequent transaction i.e. gift deed can never be fructified. In that view of the matter, it shall be open to the Petitioner - Plaintiff to agitate her case on the basis of the registered gift deed which has been brought on record by the Defendant.

5. Keeping all contentions of both the parties i.e. Plaintiff and Defendants equally open, the impugned order dated 27.09.2023 stands sustained and calls for no interference.

6. Writ Petition stands disposed in the above terms.

[MILIND N. JADHAV, J.]

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