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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 801 OF 2024
WITH
INTERIM APPLICATION NO. 14700 OF 2024
IN
APPEAL FROM ORDER NO. 801 OF 2024**

Mrs. Archana Avinash Dandekar And Another ...Appellants/Applicants
Versus
Waman Vitthal Dandekar And Ors. ...Respondents.

Mr. Dushyant Pagare i/b. Mr. M. V. Thorat for the Appellants.
Mr Rajesh Kachare a/w. Kashvi Ali for the Respondents.

CORAM : M. M. SATHAYE, J.

DATED : 19th NOVEMBER 2024

P.C.:

1. Heard learned Counsel for the Appellants and learned Counsel for the Respondents.
2. The Appeal is filed challenging the order dated 30/09/2024 passed on Draft Notice of Motion in S. C. Suit No. 2031 of 2024 by Ad-Hoc Judge City Civil Court, Borivali Div., Dindoshi, Mumbai. By the said impugned order, ad-interim relief is rejected.
3. Learned Counsel for the Appellants pointed out that the Appellant Nos. 1 and 2 are widow and daughter of Avinash Dandekar, son of Respondent No. 1-Waman Vitthal Dandekar. He pointed out that the Respondent Nos. 2, 3 and 4 are son and daughters of the Respondent No. 1 Waman Vitthal Dandekar. The relationship between the parties is not

disputed. Thus, this is a dispute between the closely related parties.

4. At the outset, learned Counsel for the Appellants submitted on instructions, that presently he is restricting his prayer to property no. 1 being Flat B-208, Sai Srushti CHS, New Link Road, Chikuwadi, Borivali, West, Mumbai – 400092. Perusal of the motion shows that the Appellants are praying for injunction restraining the Respondents from dispossessing the Appellants from the suit property no. 1 and from selling disposing and/or creating 3rd party interest therein.

5. Learned Counsel for the Respondents submitted that so far as the property no. 1-Flat B-208 is concerned, it was initially exclusively owned by the Respondent No. 1, his wife and the Respondent No. 2. He submits that after the death of the wife of the Respondent No. 1, he has executed registered gift deed dated 31/03/2024 in favour of the Respondent No. 2 (son).

6. *Prima facie*, fact remains that the share of the wife of the Respondent No. 1 would devolve upon all sons and the daughters including the husband of Appellant No. 1, through whom, the Appellants are claiming.

7. Since the dispute is at ad-interim stage in suit as on today, I am refraining from commenting any further about exclusive ownership of the properties involved, as the same may prejudice either side.

8. In light of this position, when the impugned order is considered, the reason stated therein that the Defendant No. 1 being Karta is entitled to dispose of the subject matter property for the benefit of the family, cannot be sustained. The motion will have to be heard on its own merits and on appreciation of the evidence in the light of well settled guiding principles of

prima facie case, balance of convenience and irreparable loss.

9. In that view of the matter, following order is passed:

(a) The Appeal is allowed. The impugned order dated 30/09/2024 is set aside.

(b) The Respondents are restrained from dispossessing the Appellants from the suit property no. 1 being Flat B-208, Sai Srushti CHS, New Link Road, Chikuwadi, Borivali, West, Mumbai – 400092, without following due process law and the Respondents are further restrained from dealing with or disposing of or alienating the said suit property No. 1.

(c) It is clarified that this order will operate as ad-interim arrangement, pending the motion.

(d) The motion will be decided in accordance with law, on merits, without being influenced by the observations in this order. Rival contentions of both the sides are kept expressly open.

(e) Appeal from order and pending interim application are disposed of in above terms.

10. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)