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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 32 OF 2025
IN
APPEAL FROM ORDER (ST) NO. 25273 OF 2024**

Rajprakash Dadaji Patil and Another ... Applicants

Vs.

Sunita Madhukar Bhopi Nee ... Respondents

Pratibha @ Pratima Dadaji Patil and Ors

Mr. Nachiket Kulkarni for the Applicants.

CORAM : GAURI GODSE, J.

DATE : 5th FEBRUARY 2025

ORDER :

1. Heard learned counsel for the appellant. This application is for condonation of delay of 16 days in filing the appeal.

2. I have heard the learned counsel for the appellants on merits of the appeal. The appeal is preferred by defendant no. 7 to challenge the order of injunction passed by the City Civil Court in the suit filed for partition and separate possession. By the impugned order defendant no. 7 is restrained from changing the nature of the property without permission of the court. The impugned order further restrains the defendant nos. 1, 3, 4 and 7 from creating third party rights in respect of the suit property.

3. Learned counsel for the appellants submits that based on the admissions given by defendant nos. 4 and 6 regarding relationship between the parties, learned Judge has decided the application. He submits that defendants who admitted plaintiffs' claim are not residing in the suit property and are residing elsewhere. He therefore submits that the impugned order prejudicially affects the appellants as they are residing in the suit property.

4. Learned counsel for the appellants further submits that the relations between the parties is disputed and thus without there being any finding on the relations of the plaintiffs with deceased Dadaji Patil, the plaintiffs would not be entitled to seek any order of injunction. He thus submits that serious prejudice is caused to the rights of the appellants in view of the impugned order.

5. I have perused the papers of the appeal. There is no dispute that the suit property was originally owned by Dadaji Patil and even the appellants claims through him. There is a dispute raised by the appellants on the relationship of the plaintiffs with Dadaji Patil. Learned Judge has verified the documents produced by the plaintiffs in the form of ration card and aadhar card to form a prima facie opinion that the plaintiffs are children of Dadaji Patil. The dispute between the parties regarding relationship is examined by

the learned Judge based on the documents on record.

6. Defendant nos. 6, 16, 17 and 19 have supported the plaintiffs' claim. Learned Judge has further even noted the admissions of defendant nos. 4 and 6 who were real brother and sister of the present appellant. The real brother and sister of the appellant have admitted the plaintiffs' claim. Learned Judge has also observed that even defendant no. 18 consented to the prayers made in the notice of motion.

7. Considering the nature of the prayers in the suit, seeking partition and separate possession, the status of the suit property is required to be protected. Learned Judge has taken into consideration the prima facie right of the plaintiffs, the balance of convenience and the irreparable loss that would be caused if the nature of the property is changed or third party rights are created. The learned Judge has considered the equities of all the parties and has decided the notice of motion by considering the well settled legal principles for deciding the application for interim relief during the pendency of the suit.

8. By the impugned order the appellants are restrained from changing the nature of the property without the permission of the court. Hence, no prejudice would be caused to the appellants in

view of the said restraining order, as it would always be open to the appellants to file appropriate application in the suit. The restraining order for not creating third party rights is in the interest of protecting the suit property and avoiding multiplicity of proceeding. Thus, no prejudice would be caused in view of the said interim injunction

9. . The appeal is devoid of any merit. Hence, I do not find it appropriate to issue notice in the interim application for condonation of delay.

10. In the facts and circumstances of the case, delay is condoned and the interim application is allowed in terms of prayer clause (a).

11. For reasons recorded above, appeal from order is dismissed.

[GAURI GODSE, J.]