

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 291 OF 2024
WITH
INTERIM APPLICATION NO. 7532 OF 2024**

Smt. Kalpana Kishor Sanas ... Appellant/Applicant

Vs.

Shri Rukshet Kishor Sanas and Anr. ... Respondents

Mr. S. C. Wakankar a/w. Ms. Aishwarya Bapat for the
Appellant/Applicant.

Mr. Drupad Patil i/b. Mr. Y. G. Thorat for Respondent No.1.

Mr. Nitin Gaware Patil a/w. Mr. Divyesh Jain i/b. Mr. H. M. Khupsare
for Respondent No.2.

CORAM : GAURI GODSE, J.

DATE : 26th FEBRUARY 2025

ORDER :

Appeal from Order No. 291 of 2024

1. Heard.
2. Arguable points are raised. Hence, Admit.
3. Learned counsel for respondent nos. 1 and 2 waive notice.

Interim Application No. 7532 of 2024

4. Rule. Rule on interim relief is made returnable forthwith by consent. Heard learned counsel for the parties on the interim application. Learned counsel for the respondents opposes grant of

any interim relief. They submit that the plaintiff has not proved any prima facie case that she was married to deceased Kishor. They submit that unless and until the plaintiff does not prove any prima facie case she will not be entitled to any relief in the interim application.

5. Learned counsel for the respondents submitted that Kishor had filed application before the passport authorities making a grievance that the plaintiff is claiming to be his legally wedded wife to which he had objected. Learned counsel for respondents therefore submits that the plaintiff has not proved her marriage with deceased Kishor. Hence, she is not entitled to seek any interim relief.

6. Learned counsel for the respondent no. 1 submits that even if the plaintiff succeeds in the suit, she will be entitled to only one-third share, hence, injunction cannot be granted in respect of the entire suit property.

7. I have perused the papers of the appeal. The plaintiff has filed on record copy of Aadhar Card and PAN Card to show that the plaintiff was married to deceased Kishor. The plaintiff claims to have married Kishor after death of his first wife. The plaintiff further contends that since defendants lodged police complaint against the

plaintiff denying her marriage with deceased Kishor, the suit was filed. Kishor expired on 4th June 2021. The plaintiff claims to have been married to Kishor since 1994.

8. The rival contentions of the parties are based on factual aspects which would require trial. If the plaintiff succeeds to challenge the will she would be entitled to one-third share in the suit property. The plaintiff is therefore entitled to seek protection of her rights in the suit property. Any change in the nature of the property would prejudicially affect the plaintiff's claim of division of her one-third share. In the event third party rights are created the same would result in multiplicity of proceedings. Hence, there will be interim relief in terms of prayer clause (a), during the pendency of the appeal.

9. The respondents are at liberty to file appropriate application in this court, in the event they intend to create any third party right in respect of the suit property.

10. Interim Application is allowed in the aforesaid terms.

11. Pendency of this appeal shall not be construed as a stay to further proceedings of the suit. The trial court shall proceed with the suit.

[GAURI GODSE, J.]