

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

**CIVIL APPLICATION NO.5060 OF 2011
IN
FIRST APPEAL NO.2366 OF 2011**

Rajeshkumar G. Manchanda .. Applicant

vs.

Smt.Nanda V. Manchandar and Ors. .. Respondents

Mr.A.B.Tajane for the applicant

Ms.Pallavi N.Dabholkar for the respondent no.1

**CORAM : K.K.TATED, J.
DATED : 18/03/2015**

PC:

1 Heard the learned counsel for the parties.

2 This application is preferred by original defendant no.1 for stay of the operation and implementation of the impugned judgment and decree dated 19.08.2011 passed by Jt. Civil Judge, Senior Division, Solapur in Special Civil Suit No. 28 of 2004.

3 For the sake of convenience, the nomenclature of the parties as is stated in the suit will be referred to hereinafter as the appellant/original defendant and respondent/original plaintiff.

4 The plaintiff filed Special Civil Suit No. No.28 of 2004 in the court of Jt. Civil Judge, Senior Division, Solapur for partition and separate possession in respect of the following properties:

“I-A) Property bearing Old Survey No.277/1/B/1/1/2, New Survey No.147/1/B/1/1/2 area about 5 ½ R, situated at Majrewadi within the limits of Solapur Municipal Corporation, excluding western side 404.49 Sq.Mtrs., land which was sold to Ramzan A. Hakeem Rangrej and remaining portion of land wherein hotel Blue Star is running.

1-B) Property bearing City Survey No.859 area about 31.8 Sq.Mtrs. situated at North Kasba Solapur, wherein Hotel Sher-e-punjab is running.

1-C) Maruti Omni Van bearing Registration No.MH-13-N-5113, registered in the name of Vijaykumar Gurubachanlal Manchanda.

1-D) Agricultural land bearing Gat No.108(1/1B)1/A/2 area about 02 H 02 R situated at village Karamba, Tal. North Solapur, Dist. Solapur.

1-E) Agricultural land bearing Gat No.108(1/1/C)

1/A/3 area about 02 H 02 R situated at village Karamba, Tal. North Solapur, Dist. Solapur.”

5 The Trial Court by judgment and decree dated 19.8.2011 partly decreed the suit holding that the plaintiff is entitled to 1/3rd share in the Hotel Sher-e-Punjab and two agricultural lands bearing Gut No.108[1/1/B] 1/A/2 and 108[1/1/C] 1/A/3 situated at Village Karamba, Taluka North Solapur and also for mesne profit.

6 Being aggrieved by the said decree, the defendant no.1 preferred the present First Appeal No.2366 of 2011 and Civil Application for stay of the operation and implementation of the impugned judgment and decree.

7 The learned counsel for the applicant submits that in the present proceeding this court (Coram: A.V.Nirgude, J.) by order dated 19.12.2011 granted ad-interim relief in terms of prayer clause (a) of the Civil Application. He further submits that the ad-interim relief granted by this court be continued till the hearing and final disposal of the present First Appeal. He submits that if stay is not granted, irreparable loss and injury will be caused to the applicant. The learned counsel for the applicant further submits that in Appeal Memo in ground no.15 they specifically stated that their rights in Hotel Sher-e-Punjab was transferred in the name of third parties during the pendency of the suit. These facts are not considered by the Trial Court at the time of passing impugned decree.

8 On the basis of these submissions, the learned counsel for the

defendant no.1 submits that in the interest of Justice, this Hon'ble Court be pleased to allow the present Civil Application in terms of prayer clause (a).

9 On the other hand, the learned counsel for the plaintiff vehemently opposed the present Civil Application. The plaintiff filed her Affidavit-in-Reply dated 24.6.2014. The learned counsel for the plaintiff submits that during the pendency of the suit, the defendants created third party right, title and interest in respect of the suit property. She further submits that even both the agricultural lands were sold by the defendants on 11.8.2010 that is before passing the impugned decree. For this submission the learned counsel for the plaintiff relies on paragraph (v) on page 13 of her Affidavit-in-Reply. The plaintiff also placed on record the relevant revenue documents on page 28 to 31 showing that the defendant created third party right, title and interest in respect of the agricultural properties. She submits that in view of these facts, there is no question of stay of the operation and implementation of the impugned judgment and decree dated 19.8.2011 passed by the Trial Court.

10 I have heard both the sides at length. There is no dispute between the parties that the defendant no.1 already created third party right, title and interest in respect of the Hotel Sher-e-Punjab and other two agriculture lands. Even considering paragraph (v) of the Affidavit-in-Reply filed by the plaintiff and the revenue record on page 28, it is crystal clear that the defendant already created third party right in respect of both the agricultural properties on 11.8.2010.

11 In view of these facts, there is no question of allowing the present Civil Application.

12 Civil Application stands rejected.

(K.K.TATED, J.)