

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

APPEAL FROM ORDER NO.239/2014
WITH
CIVIL APPLICATION NO.283/2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. S. V. Sadavarte for the Appellant
Mr. D. S. Mhaispurkar for the Respondent No.1.

CORAM : K. K. TATED, J.
DATE : JULY 20, 2015

P.C.:

1. Heard. This appeal is preferred by the Plaintiff challenging the order dated 25/10/2013 passed by the Civil Judge, Senior Division Pune below Exhibit 5 in Special Civil Suit No.130/2013 partly allowing the Plaintiff's Application restraining the Respondent Defendant from creating third party right, title and interest in respect of the suit property.

2. The learned counsel for the Appellant Plaintiff submits that in the present proceedings the Plaintiff filed Special Civil Suit No.130/2013 in the court of Civil Judge, Senior Division Pune for partition of HUF property and separate possession

wherein the Plaintiff preferred Application below Exhibit 5 dated 15/01/2013 which was partly allowed by the Trial Court. He submits that the Trial Court failed and neglected to consider the averments made by the Plaintiff in the plaint that all the suit properties were purchased from HUF income. He further submits that even Defendant No.2, father of Defendant No.1 also made a statement on an affidavit that the entire suit property was purchased by him from HUF income in the name of Defendant No.1. He further submits that if during pendency of the present proceedings, Respondent No.1 creates third party right, title and interest in respect of the suit property, nothing will survive in the present proceedings. He further submits that in the interest of justice, this Hon'ble Court be pleased to direct the Respondent No.1 not to create any third party right, title and interest in respect of the suit property till hearing and final disposal of the Special Civil Suit No.130/2013.

3. On the other hand, the learned counsel for the Respondent Defendant No.1 vehemently opposed the present Appeal from Order. He submits that admittedly Defendant No.1 was residing separately from his family since 1978 and he purchased all properties out of his own income.

The Plaintiff has not produced any iota of evidence to show that all the properties are joint Hindu family properties. He submits that these facts are considered by the Trial Court in paragraph 6 and 7 of the impugned order. He further submits that the Trial Court passed order on the basis of the available pleadings. Hence, there is no question of interfering with the said order at this stage. Hence, the Appeal from Order be dismissed with costs.

4. Heard the learned counsel for the parties. It is to be noted that in the present proceedings, the Plaintiff has not brought on record any evidence or pleading to the effect that the suit properties were purchased by Defendant No.2 in the name of Defendant No.1 from the nucleus of HUF. Bare statement is made by the Plaintiff in the plaint. These facts are considered by the Trial Court in paragraph 6 and 7 of the impugned order. At the time of passing the impugned order, the Trial Court relied on the judgment of the Apex Court in the matter of *D.S. Lakshmaiah and Anr Vs. Balsubramanyam and Anr AIR 2003 SC 3800(1)*.

5. Considering the fact that the Plaintiff has not

brought on record any material to show that the suit properties were purchased from the nucleus of the HUF, I do not find any reason to interfere with the well reasoned order passed by the Trial Court. Hence, Appeal from Order stands rejected.

6. Consequently, the Civil Application stands dismissed as infructuous.

JUDGE