

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

**APPEAL FROM ORDER NO. 301 OF 2015
WITH
CIVIL APPLICATION NO. 556 OF 2015**

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. R. B. Singh for the appellant.

Mr. S. B. Shekhavat for the respondents.

CORAM : K. K. TATED, J.

DATED : 22/06/2015.

P.C.:

. Heard learned Counsel for the parties.

2 This appeal is preferred by plaintiff challenging the order dated 24.12.2014 passed by Bombay City Civil Court at Bombay declined to grant ad-interim relief in Notice of Motion.

3 In the present proceeding, the plaintiff filed S.C. Suit No. 3033 of 2014 against the respondents defendants for declaration that they have 1/6th share in the suit premises i.e. Flat No. A/201, Sankalp Building, Ujjwal Nandadeed CHS Ltd. Evershine Nagar, Orlem, Malad (W), Mumbai – 400 068. This suit is filed by son and daughter against the mother

for their share. The Trial Court declined to grant ad-interim relief on the ground that the plaintiffs in the year 2009 executed affidavit-cum-declaration that they have no right, title and interest in respect of suit flat and they have no objection, if the same is transferred in the name of defendant no.1 mother. Hence, the present Appeal from Order.

4 The learned Counsel for the plaintiffs submits that the impugned order passed by the Trial Court is against justice, equity and conscience and the same is liable to be set aside. He submits that the Trial Court erred in relying on the affidavit-cum-declaration of 2009 for declining to grant ad-interim relief. He submits that the said document i.e. affidavit-cum-declaration was not duly registered as per the law. Hence, same is not binding on them. On the basis of these submissions, the learned Counsel for the plaintiffs submits that during the pendency of the present proceeding and/or S.C. Suit no. 3033 of 2014, the respondents defendants be restrained from creating any third party, right, title and interest in respect of suit flat. He submits that if ad-interim relief is not granted in favour of plaintiffs, irreparable loss and injury will be caused to them.

5 On the other hand, the learned Counsel for

the defendants vehemently opposed the present Appeal from Order. He submits that the plaintiffs on their own, executed affidavit-cum-declaration in the year 2009. The same was duly notarised before the Notary officer. He submits that it is specifically stated in the said declaration that plaintiffs have relinquished the right, title and interest in the suit flat and given no objection to transfer the same in the name of mother i.e. defendant no.1. He submits that in view of declaration executed by all the plaintiffs, the Trial Court rightly held that at present the plaintiffs have not made out any case for ad-interim relief. Hence, there is no question of entertaining the present Appeal from Order.

6 I heard both the sides at length. It is to be noted that in the present proceeding, the Trial Court on the basis of affidavit-cum-declaration of the plaintiffs held that they are not entitled to any ad-interim relief in draft Notice of Motion. Bare reading of the affidavit-cum-declaration shows that plaintiffs have categorically stated that they have no objection if the said flat transferred in the name of mother i.e. defendant no.1 and they have no right, title and interest in the same. At present, defendants have not filed their affidavit-in-reply in Notice of Motion. Considering these facts, I do not find any

reason to interfere with the well reasoned order. The said order is passed on the basis of documents executed by the plaintiffs themselves.

7 Hence, Appeal from Order stands rejected.

8 In view of rejection of Appeal from Order, nothing survives in the Civil Application. Hence, same is dismissed as infructuous.

(K.K.TATED, J.)