

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

CIVIL APPLICATION NO.1912/2012
IN
FIRST APPEAL NO.941/2012

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. D. Soni i/b. M/s. Ram & Co. for the Applicant
Mr. Vijay Patil for the Respondent No.2(1).
Mr. Prasad B. Kulkarni for Respondent No.4.

CORAM : K. K. TATED, J.
DATE : JULY 15, 2015

P.C.:

1. Heard. This Application is preferred by the Applicant Plaintiff for an order of injunction restraining the Respondents from creating any third party right, title and interest in respect of the suit property i.e. plot No.4 out of land bearing Sy.No.259/1/15 near Mumbai Agra Road, Near Bali Mandir, Panchavati, Nasik within the limits of Nasik Municipal Corporation.

2. In the present proceedings, the Applicant Plaintiff filed Special Civil Suit No. 448/1996 on 20/08/1996 for specific performance of agreement for sale dated 13/06/1981 i.e. after more than 15 years.

3. During pendency of the suit, the Applicant has not preferred any Application for an order of injunction restraining the Respondent Defendant from creating any third party right, title and interest in respect of the suit property. The Plaintiff is seeking an order of an injunction against the Respondent before this court i.e. at the appellate stage.

4. The learned counsel for the Applicant submits that the Trial Court has dismissed the suit only on the ground of mis-description of the suit property. He submits that as per the agreement for sale, the Defendant agreed to sell the plot No.4 from CTS No.259/1/13 whereas the actual plot was from Sy.No.259/1/15. He submits that, before the Trial Court, the Defendant owner failed and neglected to enter into the witness box. He submits that these facts are not considered by the Trial Court while dismissing the suit for specific performance.

5. The learned counsel for the Applicant submits that if injunction is not granted, Respondent Defendant may create further right, title and interest in respect of the suit property. He

submits that once third party rights are created, nothing will survive in the present appeal. He submits that in the interest of justice, this Hon'ble Court be pleased to pass an order of injunction restraining the Respondent from creating any third party right, title and interest in respect of the suit property till hearing and final disposal of the First Appeal.

6. On the other hand, the learned counsel for the Respondent Defendant vehemently opposed the Civil Application.

7. Heard both sides at length. It is to be noted that in the present proceedings the Plaintiff has filed suit for specific performance of agreement for sale dated 13/06/1981 after 15 years i.e. on 20/08/1996. Moreover, during pendency of the suit, the Plaintiff has not preferred any Application restraining the Defendant from creating third party right, title and interest in respect of the suit property. These facts itself show that the Plaintiff is not entitled to any relief in the Civil Application.

8. Hence, the Civil Application stands dismissed.

JUDGE