

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1583 OF 2012

IN

FIRST APPEAL NO.809 OF 2012

Sanjay Dnyandeo Ranpise ... Applicant

Vs.

Dattu Jagannath Mane. ... Respondent

Mr. A.M. Saraogi for the Applicant.

Ms. Manjiri S. Parasnis for the Respondent.

CORAM : K.K. TATED, J.

DATE : 27TH FEBRUARY 2015

P. C.:

1. Heard learned counsel for the parties.
2. This application is preferred by the Applicant-Original Plaintiff for restraining the Respondent-Defendant from creating any third party rights and/or parting with possession in respect of the property being the plot of land admeasuring 00.15 Ares situated at Lingali Survey No.87/2, Taluka Daund, District Pune, till the hearing and final disposal of the first appeal.

3. Learned counsel for the Applicant-Plaintiff submits that the Applicant-Plaintiff has filed a civil suit being Special Civil Suit No.178 of 2010 in the Court of Civil Judge, Senior Division, Baramati for recovery of Rs.12 lakhs with interest at 18% per annum. That suit was dismissed by the trial court by order dated 27/2/2012. He submits that after filing the present first appeal before this Court, they learnt that the Respondent-Defendant started disposing his properties to defeat the decree, if any, passed by this Court in the present proceedings. To that effect, learned counsel for the Applicant relied on paragraph 3 of the civil application, which reads thus:

“The Applicant states that it has also been noticed that the Respondent is disposing of the said plot in pieces one after the other and has succeeded in disposing of some portion of the plot of land. The Applicant states that it seems that the whole intention of the Respondent seems to be that if he dispose of the said property and thereafter, even if any such decree is being passed, the same would remain to be a paper decree as by that time, no property would be available with the Respondent and nothing could be done even if any decree is passed.”

4. On the basis of these submissions, learned counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to restrain the Respondent-Defendant from creating any third party right, title and interest in respect of the property admeasuring 00.15 Ares.

5. On the other hand, learned counsel appearing on behalf of Respondent-Defendant vehemently opposed the present civil application. She submits that the suit filed by the Applicant-Plaintiff for recovery of the amount was dismissed by the impugned judgment and decree dated 27/2/2012. She further submits that during the pendency of the suit, the Applicant-Plaintiff had not made any application for attachment before judgment. She further submits that even if any decree is passed in the present first appeal, they can execute the same as per the provisions of Order XXI of the Civil Procedure Code. Hence, there is no question of allowing the present civil application. She further submits that in case, this Court allows the present civil application, in that situation, the Respondent-Defendant may be granted liberty to sell the said property after obtaining permission from this Court.

6. I have heard learned counsel for the parties. In the present proceedings this Court (Justice S.S. Shinde) by order dated 28/10/2013 granted three weeks' time to the Respondent-Defendant to file Affidavit-in-Reply and serve a copy on the other side. This Court also granted adequate protection restraining the Respondent-Defendant from creating third party right, title and interest in respect of the said property.

7. Till today, the Respondent-Defendant has not filed Affidavit-in-Reply. Considering the submissions made by learned counsel for

the Applicant-Plaintiff and the reasons disclosed in paragraph 3 of the civil application, I am satisfied that the Applicant-Plaintiff has made out a case for allowing the civil application. At the same time, liberty is granted to the Respondent-Defendant to prefer an application for permission to dispose of the said property or part thereof. Hence, the following order:

ORDER

8. Civil application is allowed in terms of prayer clause (a), which reads thus:

“(a) that pending the hearing and final disposal of the present First Appeal, the Respondent be restrained by an order and injunction of this Hon'ble Court from in any manner creating third party rights and/or parting with possession in respect of the property being the plot of land admeasuring 00.15 Ares situated at Lingali Survey No.87/2, Taluka Daund, District in any manner whatsoever and/or save and except by obtaining prior permission from this Hon'ble Court on such terms as this Hon'ble Court may deem fit and proper.”

9. Civil application is disposed of accordingly.

10. The hearing of the first appeal is expedited.

[K.K. TATED, J.]