

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.
CIVIL APPLICATION NO.1704 OF 2015
IN
FIRST APPEAL NO.1720 OF 2007

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. M. A. Narvekar for the Applicant
Mr. S. Sadavarte for the Respondent Nos.1,2, 4 to 7, 8A to 8C, 9A to 9D in First Appeal.

CORAM : K. K. TATED, J.

DATE : MAY 8, 2015

P.C.:

1. Heard. This Application is preferred by the Plaintiff restraining the Respondent by an order of injunction from creating any third party right, title and interest in respect of the suit property i.e. land admeasuring 1H 56.5 R from sy.No.10/1A (Gut No.498) situated at Pune, Tq. Maval, Dist. Pune till hearing and final disposal of the First Appeal.

2. The Applicant Plaintiff filed Special Civil Suit No. 512/1992 in the court of Jt. Civil Judge, Senior Division Pune for specific performance of agreement to sell dated 19/08/1988 of the suit property, which was partly decreed by the Trial Court by judgment and decree dated 29/09/2006. The operative part of the said order reads thus:

- “1. The suit is partly decreed.
2. The Defendant Nos.1 to 8(a), (b) & (c) do pay Rs.50000/- to Plaintiff towards damages as per their share in the suit land @ 18% interest on Rs.35000/- from the month of November 1988 and on Rs.15000/- from the month of April 1991 till the date of judgment.
3. The Plaintiff is also entitled for future interest @ 12% from the date of judgment till the date of realization on the decretal amount.
4. The Plaintiff is entitled for proportionate costs of the suit.
5. The suit to the extent of specific performance of contract, for injunction and for declaration stands dismissed.”

3. Being aggrieved by the said decree, the Applicant Plaintiff filed First Appeal in this court which was admitted on 10/03/2011. At that time, the Applicant has not made any Application before this court for directing the Respondent Defendant either to maintain status-quo and/or restraining them from creating any third party right, title and interest in respect of the suit property.

4. The learned counsel for the Applicant Plaintiff submits that the Respondent Defendant filed Misc. Application No.968/2014 in the Trial

Court for permission to deposit the compensation amount as per decree dated 29/09/2006. He further submits that if that Application is allowed by the Trial Court, that will affect the Plaintiff's right, title and interest in respect of the suit property. He further submits that the Respondent Defendant be restrained by an order of injunction from creating any third party right, title and interest in respect of the suit property because the Plaintiff is interested in land and not in compensation. The learned counsel for the Applicant submits that they have good chance of success in the matter. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the Civil Application in terms of prayer clauses (a) and (b) which read thus:

a. That the Respondents be directed by an order of injunction of this Hon'ble Court not to create any third party right, title or interest in the suit property during the pendency of the appeal and its final hearing and disposal of the merits.

b. This Hon'ble Court be pleased to direct the Hon'ble Joint Civil Judge, Senior Division, Pune not to entertain any Applications and/or pass any orders in respect of the suit property, hearing and disposal of the above appeal.

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

the Civil Application. He submits that during pendency of the Special Civil Suit No. 513/1992 in Trial Court, there was no order of injunction against Defendant from creating any third party right, title and interest in respect of the suit property. He further submits that the Misc. Application filed by Defendant was only to comply with the directions in the decree passed by the Trial Court. Hence, there is no substance in the present Civil Application. Same be dismissed with costs.

7. Heard both sides at length. There is no dispute that in the present proceedings, the suit filed by the Plaintiff for specific performance of agreement for sale dated 19/08/1998 was partly decreed directing the Defendant to pay compensation. There was no direction from the Trial Court to execute the sale deed in favour of the Plaintiff and hand over possession. Moreover, during pendency of the Special Civil Suit before the Trial Court, there was no injunction restraining the Defendant from creating any third party right, title and interest in respect of the suit property. Therefore, there is no question of entertaining the present Civil Application in respect of prayer clause (a).

8. Prayer clause (b) is for direction to restrain the Trial Court from entertaining any Application filed by the Defendant in respect of the suit property. It is to be noted that Respondent Defendant filed Misc. Application No.968/2014 to comply with the directions in decree dated 29/09/2006 i.e. to pay sum of Rs.50000/- towards the damages with 18% interest on Rs.35000/- to the Applicant Plaintiff.

9. In view of these facts, there is no question of directing the Trial Court not to entertain any Application because the Application filed by Respondent Defendant is only to comply with orders passed by the Trial Court. Hence, I do not find any substance in prayer clause (b) of the Civil Application.

10. Civil Application stands dismissed.

JUDGE