

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.
CIVIL APPLICATION NO.2327 OF 2014
IN
FIRST APPEAL NO.114 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. Tushar S. Sonawane for the Appellant
Mr. Sandip Dilip Shinde for the Respondent No.8.

CORAM : K. K. TATED, J.
DATE : JUNE 24, 2015

P.C.:

1. Heard. This Application is preferred by the Plaintiff for grant of injunction restraining Respondent No.1 - Defendant No.8 from creating any third party right, title and interest in respect of the suit property as described in paragraph 1 of the plaint.

2. The Plaintiff filed Special Civil Suit No.154/2012 in trial court for declaration that sale deed between Defendant No.1 to 5 as owner and and Defendant No.8 as purchaser, is null and void and for injunction from creating any third party right, title and interest in respect of the suit property.

3. The learned counsel for the Applicant submits that the Trial Court erred in coming to the

conclusion that the Applicant has no right of pre-emption to purchase the said property. He submits that the said property was sold by Defendant No.1 to 5 in favour of Defendant No.8 without any authority. That suit property was joint family property. Hence, he submits that, if during pendency of the First Appeal, Defendant No.8 creates third party right, title and interest in respect of the suit property, nothing will survive in the present proceedings. Hence, in the interest of justice, this Hon'ble Court be pleased to pass an order of injunction restraining Defendant No.8 from creating any third party right, title and interest in respect of the suit property.

4. On the other hand, the learned counsel for the Defendant No.8 vehemently opposed the present Civil Application. He submits that the suit property is purchased by them by registered sale deed dated 31/01/2012 and he is in possession of the same. They further submits that the Trial Court, in paragraph 17 of the impugned judgment and decree categorically held that the Plaintiff failed and neglected to produce any document to show that the suit property was of HUF property. He further submits that even the Trial Court, in paragraph 20, categorically held that the Plaintiff has no right to purchase the said property. He

submits that as on today, the Defendant No.1 is absolute owner on the basis of the sale deed dated 31/01/2012. He further submits that, if injunction is granted against him from creating any third party right, title and interest in respect of the suit property that will be injustice having injunction against the original owner. Hence, there is no substance in the First Appeal. Same to be dismissed with costs.

5. Heard the learned counsel for the parties at length. It is to be noted that in the present proceedings, the Plaintiff has filed suit for declaration that sale deed dated 31/01/2012 is null and void on the ground that Defendant Nos.1 to 5 sold HUF property without his consent. It is to be noted that the Plaintiff failed to produce any document to show that the suit property was HUF and these facts are recorded by the Trial Court in paragraph 7 of the impugned judgment and decree. Moreover, after execution of the sale deed, the Plaintiff has no right of pre-emption as per the Transfer of Property Act. Hence, I do not find any substance in the Civil Application. Same stands dismissed.

JUDGE