

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.263 OF 2015
WITH
CIVIL APPLICATION NO.327 OF 2015**

Mr.Ivan Lawrence Martis .. Appellant

Vs.

Mr.Francis Martis & Ors. .. Respondents

Mr.Anand Mishra i/b Mr.A.M.Saraogi for the appellant

Mr.Moinuddin A. Khan for the respondent no.1

**CORAM : K.K.TATED, J.
DATED : 23/06/2015**

PC:

1 Heard the learned counsel for the parties.

2 The learned counsel for the appellant submits that at present respondent no.1 Francis Marties is in possession of the suit flat i.e. flat no.B-302, situated at Silver Avenues Building, Sunder Nagar, Kolivary Village, Kalina, Santacruz (East), Mumbai. Hence, he is not pressing Appeal from Order against respondent nos.2 and 3.

3 This Appeal from Order is preferred by plaintiff challenging the order dated 20.8.2013 passed by Bombay City Civil Court, Mumbai in Notice of Motion No.1892 of 2013 declining the plaintiff's prayer for an

order of injunction against respondent no.1 original defendant no.1 from disturbing his joint, use and occupation in respect of the suit flat and also from creating any third party right, title and interest.

4 The learned counsel for the respondent no.1 after taking instructions from his client who is present in court makes a statement that his client will not create any third party right, title and interest in respect of the suit flat till the hearing and final disposal of S.C.Suit No.2217 of 2013. To that effect, advocate for respondent no.1 given in writing on farad. Same is accepted.

5 The learned counsel for the appellant plaintiff submits that in view of the statement made by advocate for respondent no.1, he does not want to press the present Appeal and that statement be continued till hearing and final disposal of suit. Hence, following order:

- a) Appeal from Order stands dismissed as withdrawn.
- b) Statement made by learned counsel for respondent no.1 that his client will not create any third party right, title and interest in respect of the suit flat i.e. flat no.B-302, situated at Silver Avenues Building, Sunder Nagar, Kolivary Village, Kalina, Santacruz (East), Mumbai till hearing and final disposal of S.C.Suit No.2217 of 2013 is accepted.
- c) Liberty granted to the appellant plaintiff to move before the Trial Court for early hearing of Suit. Trial Court will decide that application on its own merits.

- d) Appeal from Order stands dismissed as withdrawn.
- e) No order as to costs.
- f) In view thereof, Civil Application does not survive.
The same is also dismissed as infructuous.

(K.K.TATED, J.)