

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

**CIVIL APPLICATION NO. 1621 OF 2008
IN
SECOND APPEAL NO. 162 OF 2012**

Sunildatta Pandurang Wagh	... Applicant
V/s.	
Sou. Ranjan Balu Kudale	... Respondent

Mr. Uday Warunjikar for the applicant.
Mr. Madhav Jamdar for the respondent no. 8.

**CORAM : K. K. TATED, J.
DATED : 01/10/2015.**

PC.:

. Heard learned Counsel for the parties.

2 This application is preferred by the plaintiff for an order of injunction restraining the Respondents defendants from creating 3rd party rights, title and interest in respect of suit property during the pendency of the Second Appeal.

3 In the present proceeding, the applicants plaintiffs filed Regular Civil Suit No. 189 of 1999 for specific performance of agreement dated 03.01.1989 in respect of ½ portion of Gat No. 283 situated at village Asale, Taluka Wai, District Satara. That suit was dismissed by the Trial Court on 18.01.1989. Thereafter, the plaintiff preferred the Regular Civil Appeal No. 71 of 1999 before the District Court. In that appeal, the Appellate Court framed following points for consideration.

POINTS

- 1) *Whether plaintiff proves that first Defendant was competent to execute an agreement of sale of the suit land in his favour?*
- 2) *Whether plaintiff proves that in fact there was an agreement of sale which was subsequently reduced into writing and registered?*
- 3) *Whether plaintiff entitled for decree of specific performance of contract?*
- 4) *What order in this appeal?*

FINDINGS

No.

No.

No.

As per final Order.

4 After considering the evidence on record the Appellate Court dismissed the appeal by decree dated 18.03.2008. Hence, the plaintiff preferred the present Second Appeal.

5 Second Appeal was admitted by this Court on 29.07.2015.

6 The learned Counsel for the appellant plaintiff submits that pending the hearing and final disposal of the present Second Appeal, respondent may be restrained by an order of injunction from creating third party rights, title and interest in respect of suit property. He submits that as the Second Appeal is admitted the respondent be restrained by an order of injunction from creating third party rights, title and interest in respect of suit property. He submits that if respondent creates third party rights in respect of suit property, then nothing will survive in the present Second Appeal. Hence, this Hon'ble court be pleased to allow Civil Application in terms of prayer clause (a).

7 On the other hand, the learned Counsel for the respondent

defendant vehemently opposed the present Civil Application. He submits that applicant/plaintiff has not made out any case for an order of injunction.

8 I heard both the sides at length. It is to be noted that in the present proceeding, the suit was filed by the applicant in the year 1989. He has not stated in the Civil Application whether during the pendency of suit or appeal any injunction order was passed by both the Courts below restraining the defendants from creating any third party rights, title and interest in respect of suit property. Considering these facts, I do not find any substance in the present Civil Application.

9 Hence, Civil Application stands rejected.

(K.K.TATED, J.)

CERTIFICATE

Certified to be true and correct copy of the
original signed order.