

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

**CIVIL APPLICATION NO.3234 OF 2014
IN
FIRST APPEAL NO.2260 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.S.S.Lanke for the applicant

Mr.Michael Behl with Mr.K.G.Mhatre and
Mr.Prateek Pai i/b M/s.Mhatre and Associates
for the respondent nos.1 and 2

CORAM : K.K.TATED, J.
DATED : 09/04/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by defendant for return for Share Certificate in respect of flat No.201 of Trishul Apartments 'A' Building C.H.S. Ltd. for making appropriate endorsement i.e. by adding name of legal heirs of deceased Pradip Ramdas Joshi original defendant.
- 3 The learned counsel for the applicant is ready and willing to file undertaking in this court that they will bring back original documents as soon as endorsement is made by the Society.
- 4 The learned counsel for the respondent

plaintiff vehemently opposed the present Civil Application. He submits that the present Civil Application is preferred by defendant to defeat right, title and interest in respect of the suit flat no.201. He submits that the suit flat is of HUF property. Hence, defendant has no right to carry out appropriate amendment by adding name of applicant no.1. He further submits that in view of Order 13 Rule 9 of the Code of Civil Procedure, 1908 unless and until First Appeal is disposed of, applicant is not entitled to return the said certificate. On this submission, the learned counsel for the respondent plaintiff vehemently opposed the present Civil Application.

5 I have heard both the sides at length. It is to be noted that in the present proceeding, plaintiff filed S.C.Suit No. 2728 of 2001 restraining defendant from disturbing their possession in respect of the suit flat. That suit was decreed by the Trial Court on 24.11.2007. Operative part of the said order reads thus:

“1. S.C.Suit No.2728 of 2001 is decreed. The defendant is hereby perpetually restrained from dispossessing the plaintiffs and their family members and/or disturbing the possession of the plaintiffs and their family members in respect of the suit premises;

without following due process of law.

2. No order as to costs.
3. Original documents be returned to the parties after the appeal period is over on obtaining xerox copies thereof on usual undertaking.
4. Suit stands disposed of accordingly.
5. R & Ps be sent to Record Department.”

6 No where it is declared by the Trial Court that the suit property is belonging to the HUF. In the present proceeding, share certificate stand in the name of deceased Pradeep Ramdas Joshi. Hence defendant made application for return of the share certificate to make appropriate endorsement of the applicant no.1 as legal heir in the said share certificate.

7 Considering these facts and the reason disclosed by the applicant in Civil Application, I am satisfied that the Applicant has made out a case for allowing the present Civil Application. At the same time, applicant had to file undertaking before this court that they will bring back original share certificate immediately as soon as endorsement is made by the Co-operative Housing Society. Hence, following order:

- i) Civil Application is allowed in terms of prayer

clause (a) which read thus:

“That this Hon'ble High Court may be pleased to pass appropriate orders in respect of Return of Share Certificate of Trishul Apartments 'A' Building C.H.S. Ltd. in the record of Exhibit 'D-5' in the First Appeal to the Appellants for producing the same to the Society for carrying out necessary amendments of transfer of Flat No.201 in the name of Appellant No.1 herein.”

- ii) Applicant to file undertaking as stated above before taking share certificate for Co-operative Housing Societies's endorsement.
- ii) As soon as endorsement is made by the Co-operative Housing Society in the share certificate they have to bring original share certificate immediately before this court.
- iii) During this period applicant has to place on record photocopy of share certificate duly attested by the Advocate on record.
- iv) Civil application stands disposed off accordingly.

(K.K.TATED, J.)