

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

**CIVIL APPLICATION NO.3658 OF 2012
IN
FIRST APPEAL NO.1512 OF 2012**

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.C.K.Tripathi for the applicant

Mr.Prashant Bhavake for the respondent no.5

CORAM : K.K.TATED, J.

DATED : 17/07/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 Though other respondents are duly served, no one appeared on behalf of them when the matter was called out.
- 3 This application is preferred by plaintiffs for an order of injunction restraining respondents from creating any third party right, title and interest in respect of the suit property more particularly described in Schedule being Exhibit 1 of the present Civil Application.
- 4 In the present proceeding, the plaintiff filed S.C.Suit No.128 of 2003 in the Bombay City Civil Court at Bombay for declaration that the will dated 13.12.1998 is fabricated and false document and

also for 1/5th share in the entire property. The Trial Court by decree dated 25.8.2012 held that the plaintiff is entitled 1/5th share in the property CTS No.52-A (part), Magdum house as described in detail in the plaint.

5 The learned counsel for the plaintiff further submits that in Trial Court they preferred Notice of Motion No.256 of 2003 for an order of injunction restraining respondent defendant from creating any third party right title and interest of the suit property. He submits that in that motion, Trial Court granted interim protection on 7.6.2006 directing defendant not to sell mortgage or hypothecate in part or portion of the suit property till final hearing and disposal of the suit. In that order, the Trial Court recorded that “the defendant also submits that they will submit list of tenants/licensee within two months from that order”. In view of that statement, the plaintiff withdraw the Notice of Motion No.256 of 2003.

6 The learned counsel for the plaintiff submits that interim protection granted by Trial Court on 7.6.2006 be continued till the hearing and final disposal of the First Appeal.

7 On the other hand, the learned counsel for respondent no.5 vehemently opposed the present Civil Application. He submits that prima facie applicant is not entitled to share in the remaining

property. He relies on the judgment of this court in the matter of *Badrinarayan Shankar Bhandari v. Omprakash Shankar Bhandari* reported in 2014 (5) *Mh.L.J.* 434. After arguing for some time, advocate for the respondent no.5 after taking instructions from his client who is present in court makes a statement that they will not sell the suit property till the hearing and final disposal of the present First Appeal.

8 The learned counsel for the applicant submits that they have no objection if statement made by the respondent no.5 is accepted and Civil Application is disposed of.

9 On the said statement, by consent of both the parties, following order is passed:

- a) Statement made by the learned counsel for respondent no.5 that they will not sell the suit property till the hearing and final disposal of the suit property is accepted.
- b) Civil Application is disposed of accordingly.
- c) Liberty granted to the respondent to make appropriate application as and when they want to sell the suit property and that application be decided after hearing both the sides according to law.

(K.K.TATED, J.)