

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

**CIVIL APPLICATION NO.3683 OF 2012
IN
FIRST APPEAL NO.1520 OF 2012**

Mr.Abhijit Rohidas More .. Applicant

vs.

Shri Sandip Baburao Ambekar and Ors. .. Respondents

Mr.Avinash B. Avhad for the applicant

Mr.S.S.Kanetkar for the respondent no.2

**CORAM : K.K.TATED, J.
DATED : 17/07/2015**

PC:

1 Heard the learned counsel for the parties.

2 This application is preferred by plaintiff for an order of injunction restraining respondents from alienating, transferring, selling and/or creating third party interest in respect of the suit property i.e. land admeasuring 40 R Gat No.285 situated at Urase Villate Taluka Maval Dist. Pune.

3 In the present proceeding, the applicant plaintiff filed Special Civil Suit No.1792 of 2008 in the court of 3rd Joint Civil Judge, Senior Division Pune for specific performance of contract and declaration that the sale deed dated 10.6.2008 executed by defendant no.1 in favour of defendant no.2 in respect of the suit property was not binding on the

plaintiff, for permanent injunction restraining defendant from creating third party right, title and interest and for damages of Rs.11,25,000/- along with interest @ 18% p.a. and for specific performance of agreement for sale dated 5.3.2007 between plaintiff and defendant no.1. Suit was partly decreed by the Trial Court, by decree dated 28.8.2012 declining to grant decree for specific performance of contract, declaration and permanent injunction. The Trial Court directed defendant no.1 to pay Rs.2,50,000 to the plaintiff along with interest @ 6% p.a. from 20.4.2007 till filing of suit and thereafter till realisation of the decretal amount. Hence, applicant preferred present First Appeal. Same was admitted by this court.

4 The learned counsel for the applicant submits that in the present proceeding, applicant by agreement for sale dated 5.3.2007 agreed to purchase the suit property from defendant no.1. Defendant no.1 sold the suit property to defendant no.2 by registered sale deed dated 10.6.2008. Hence, plaintiff filed S.C.Suit No.1792 of 2008. He submits that in Trial Court applicant preferred application under Order 39 Rule 1 and 2 of the Civil Procedure Code, 1908 for an order of injunction restraining respondents defendants from creating any third party interest in respect of the suit property till the hearing and final disposal of the suit. He submits that after hearing both the sides, Trial Court allowed the Exhibit 5 by order of 4.10.2008. Operative part of the said order reads thus:

“ORDER

- 1] Application Exh-5 is allowed.
- 2] Defendants are temporarily restrained from causing

any sort of third party interest in the suit property pending trial of the suit.

3] Cost in cause.”

5 The learned counsel for the applicant submits that as First Appeal is admitted by this court, respondents defendants may be restrained by an order of injunction from creating any third party interest in respect of the suit property. He submits that if respondent defendant creates third party interest in the suit property, nothing will survive in the present proceeding. He submits that applicant has good chance of success in the present matter. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the Civil Application in terms of prayer clause (b). He submits that if Civil Application is not allowed in terms of prayer clause (b), irreparable loss and injury will be caused to the applicant.

6 On the other hand, the learned counsel for the respondent no.2 defendant no.2 vehemently opposed the present Civil Application. Respondent no.2 defendant no.2 filed their affidavit dated 27.3.2015 to oppose the present Civil Application. He submits that the Trial Court specifically framed issue no.3 about creating third party right, title and interest in respect of the suit property which reads thus:

“3. Does plaintiff prove that defendant no.2 is trying to create third party interest in the suit property by selling it?”

7 He submits that Trial Court discussed the said issue in paragraph 29 of the impugned order and answered in the negative. He further submits that even in the present Civil Application, applicant has not

shown any apprehension about creating third party interest in respect of the suit property on the part of defendant no.2. He submits that in paragraph 11 of the Civil Application, applicant stated that if third party interest is created in respect of the Suit Property, applicant will suffer irreparable loss and damage which cannot be compensated in terms of money. He submits that plaintiff has not disclosed any reason and or cause for filing the present Civil Application. He submits that as the applicant plaintiff failed and neglected to show any cause in Civil Application for injunction, plaintiff is not entitled to any relief in the present Civil Application and same be dismissed with costs.

8 I have heard both the sides at length. It is to be noted that even the Trial Court framed the issue about creating third party interest by the defendant no.2 being issue no.3. That issue was discussed by the Trial Court in paragraph 29 and answered in the negative. Even in the present Civil Application, applicant has not shown any apprehension and or cause that defendant no.2 is going to create any third party interest in respect of the suit property. For want of sufficient cause, I do not find any reason to entertain and or allow the present Civil Application. Hence, Civil Application is rejected.

(K.K.TATED, J.)