

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

**CIVIL APPLICATION NO.868 OF 2015
IN
SECOND APPEAL NO.530 OF 2012**

Shri Hari Savliram Shirsath
(Since deceased through legal heirs)
Shri Namdeo Hari Shirsath & Ors.

.. Applicants

vs.

Shri Tukaram Savliram Shirsath
(Since deceased through legal heirs)
Somnath Tukaram Shirsath and Ors.

.. Respondents

Mrs.Smita Gaidhani for the applicants
Mr.Mahesh Rawool with Mr.K.P.Shah i/b Mr.PB.Shah for the respondent
nos.1 to 5

CORAM : K.K.TATED, J.
DATED : 27/10/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 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 till the hearing and final disposal of the Second Appeal.
- 3 The learned counsel for the applicants submits that the Second Appeal is admitted by this court on 17.6.2014 on following three substantial questions of law. :

- a Whether the suit property is joint family property?
- b Whether the plaintiffs have any share in such property?
- c Whether defendant no.1 has established the will dated 13th June, 1968 said to have been executed by one Thakubai in favour of defendant No.1?"

4 The learned counsel for the applicant submits that if during the pendency of the present Second Appeal, respondents defendants created third party right, title and interest in respect of the suit property then nothing survives in the Second Appeal. She further submits that applicants have apprehension that the respondents defendants may create any third party right, title and interest in respect of the suit property intentionally to defeat the plaintiffs right in the present proceeding. Hence, during the pendency of the present Second Appeal, this Hon'ble Court be pleased to restrain by an order of injunction to the respondents defendants from creating any any third party right, title and interest in respect of the suit property.

5 On the other hand, the learned counsel for the respondents org.defendants vehemently opposed the present Civil Application. He submits that the applicant has not made out any case for an order of injunction restraining defendants from creating any third party right, title and interest in respect of the suit property during the pendency of the present Second Appeal. He further submits that applicants have not pointed out any circumstances by which the applicants have apprehension that respondents defendants may create any third party right in the suit property. He submits that during the pendency of the Regular Civil Suit No.99 of 2006 and Civil Application No.46 of 2009,

applicants plaintiffs have not made any application for an order of injunction. Hence, same cannot be granted in the present Second Appeal though Appeal is admitted. Hence, there is no substance in the present Civil Application and same be dismissed with costs.

6 I have heard both the sides at length. In the present proceeding, applicants plaintiffs filed Regular Civil Suit No.99 of 2006 for partition of HUF property, possession and injunction. That suit was dismissed by the Trial Court on 17.11.2008. Against which plaintiff preferred Civil Appeal No.46 of 2009. That appeal stands dismissed by decree dated 2.2.2012. During the pendency of the suit and or appeal, injunction order was not passed against the respondents defendants from creating any third party right, title and interest in respect of the suit property. Even applicant has not made averments in the present Civil Application about any injunction order granted by the Trial Court and or appellate court. First time in the present Second Appeal, applicants plaintiffs made application for an order of injunction restraining respondents defendants from creating any third party right, title and interest in respect of the suit property. Applicants plaintiffs have not disclosed any apprehension and or reason for allowing the present Civil Application. The averments made in paragraph 7 of the Civil Application does not disclose any cause for issuing injunction order against the respondents. In any case, just because Second Appeal is admitted, the applicants plaintiffs are not entitled any injunction order as a matter of course. Hence, I do not find any reason to allow the present Civil Application. Hence, Civil Application is rejected.

(K.K.TATED, J.)