

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

***APPEAL FROM ORDER NO. 113 OF 2016
ALONG WITH
CIVIL APPLICATION NO. 149 OF 2016***

Parveen Sajeed Marwadi

... Appellant

v/s

Shabbir Shaikh & ors.

... Respondents

Mr.Paritosh Jaiswal i/by Karan Thorat for the appellant/ applicant.

Mr.Vijendra Kumar Rai for Resp. No.1.

Ms.Priti Jaiswal for Resp. No.2.

CORAM: N.M. JAMDAR, J.

DATED : 15 MARCH 2016

P.C. :

By this Appeal from Order, the Appellant challenges the order passed by the City Civil Court, Dindoshi, dated 8 January 2016 wherein the Notice of Motion No.3021 of 2015 taken out by the Appellant-Plaintiff in the suit filed by him, has been dismissed. The Notice of Motion was taken out to restrain Defendant Nos.1 and 2 from creating any third party rights and for appointment of the Court Receiver.

2 Learned counsel for the Appellant submitted that the

Appellant has entered into an agreement for sale of the property with Defendant No.2 and has paid the entire consideration. He submitted that, in the circumstances, it is equitable that the Defendants need to be restrained from creating third party rights in the suit property. Learned counsel for the Respondents submitted that the agreements relied upon by the Appellant are unregistered and are not reliable. He submitted that the Appellant is not in possession of the property and the Defendant No.1 is in possession of the property.

3 Apart from the merits of the rival contentions, when a query was put to the learned counsel for Defendant No.1 as to whether Defendant No.1 proposes to create any third party rights in the suit property, he submitted that Defendant No.1 does not propose to create any third party rights at present, however, his entitlement to create third party rights in future should not be foreclosed by passing an order of injunction.

4 In view of this statement, it is not necessary to keep the Appeal pending. In case Defendant No.1 seeks to create any third party rights in the suit property, he will apply to the City Civil Court for appropriate direction and the application will be then considered on its own merits, considering that the earlier orders are interim orders.

5 Keeping all points of the respective parties open, the Appeal

from order is accordingly disposed of.

6 In view of disposal of the Appeal from Order, the civil application does not survive and is disposed of.

(N. M. JAMDAR, J.)