

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.987 OF 2015
IN
WRIT PETITION NO.4710 OF 2009

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.Jayant Gaikwad for the applicant

Mr.Umesh Mankapure for the respondent

CORAM : K. K. TATED, J.

DATE : JULY 4, 2016

P.C.:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by plaintiff for vacating interim relief granted by this court by order dated 5.10.2009 in view of subsequent development.
- 3 In the present proceeding, applicant plaintiff filed Regular Civil Suit No.23 of 1995 in the court of Civil Judge, Junior Division Atpadi for partition and possession of HUF property. In that Suit, plaintiff made application below Exhibit-117 to seek permission to examine defendant no.14 as a witness. That application was allowed by Trial

Court by order dated 20.3.2009. Being aggrieved by the said order, respondent defendant nos.1 to 3 preferred Writ Petition No.4710 of 2009. Same was admitted and interim relief granted. In the meanwhile, defendant no.1 sold his undivided share in HUF property by sale deed dated 18.1.2006 to Anusaya S. Kamble and by sale deed dated 1.1.2014 to Ankush A. Patil. On the basis of those two sale deeds the Revenue Authority carried out amendment in their record by Mutation Entry No.4681 and 5994. Hence, the plaintiff preferred the present Civil Application for vacating ad-interim relief.

4 The learned counsel for the applicant plaintiff submits that though org.defendant nos.1 to 3 filed Writ Petition in this court on 28.4.2009, they failed to disclose in the Writ Petition the fact that they already created third party right, title and interest in respect of the suit property. He further submits that on one hand, defendant nos.1 to 3 created third party rights in respect of the suit property and on the other hand, they filed the present petition and obtained stay for further proceeding of the Suit filed by the plaintiff. He submits that as the defendant nos.1 to 3 suppressed material facts from this court in the Writ Petition, they are not entitled any relief.

Hence, this Hon'ble Court be pleased to vacate interim relief granted by this court on 5.10.2009.

5 On the other hand, the learned counsel for defendant nos.1 to 3 vehemently opposed the present Civil Application. He submits that Writ Petition was admitted by this court after issuing notice to the other side. He submits that though notice was issued to the respondent they failed and neglected to remain present. He further submits that even defendant no.10 created third party right, title and interest in respect of his undivided share in the suit property. At the time of deciding the Suit, Trial Court can consider equitable partition between the parties considering the sale deed executed by defendant no.1. He submits that in any case, defendant no.1 sold his undivided share therefore, that cannot be termed as creating third party rights in respect of the suit property. He further submits that the present Writ Petition filed by defendant no.1 to 3 and because of mistake on the part of defendant no.1 other defendant nos.2 and 3 should not suffer.

6 On the basis of these submissions, the learned counsel for the defendant nos.1 to 3 submit that there is no substance in the present Civil Application and same be dismissed. He further submits that defendant nos.1 to 3 have no

objection if hearing of Writ Petition is expedited.

7 I have heard both the sides at length. It is to be noted that defendant no.1 created third party rights in respect of the suit property in the year 2006 and 2014. They failed and neglected to disclose those facts at the time of filing the present petition. He submits that defendant no.1 sold portion of Gut No.1663 and 1660 in favour of Anusaya S. Kamble by sale deed dated 18.1.2006. Those facts were not disclosed by the defendant no.1 at the time of filing the present Writ Petition which were filed in 2009.

8 As the defendant failed to disclose material facts at the time of filing Writ Petition and sold their shares in suit property to third person, I am of the opinion that they are not entitled for any relief from this court. Hence, following order is passed:

- a) Interim protection granted by this court in terms of prayer clause (d) of Writ Petition by order dated 5.10.2009 stand vacated.
- b) Trial Court can proceed with further hearing of Regular Civil Suit No.23 of 1995, on its own merits.
- c) Civil Application stands disposed off accordingly.

d) No order as to costs.

JUDGE