

Sequeira

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

APPEAL FROM ORDER NO. 942 OF 2015

Shobha Sudhakar More.

... Appellant

V/s.

Sachin Kalyanrao Nigade & anr.

... Respondents.

Mr.P.M.Arjunwadkar, for the Appellant.

Ms.Bhakti Bhosle i/b Mr.Rahul Kate, for Respondent No.1.

*Coram : N.M. Jamdar, J.
Monday 20 June, 2016.*

P.C. :-

The Appellant challenges the order passed by the learned Civil Judge, Senior division, Pune allowing the application dated 12 December 2013 filed by the Respondents below Exh.5 and restraining the Appellant from creating third party right in the suit property. The Suit was filed by the Respondent-Plaintiff for specific performance. Pending the Suit for specific performance the above mentioned application has been taken out which has been granted.

2 The learned counsel for the Appellant submitted that the main reason why the impugned order is challenged is that the observations made by the learned Civil Judge is regarding the legality of the agreement in question would affect merits of the case. He submitted that the agreement is not to be looked at at all for want of stamp duty and registration.

3 Pending the Suit for specific performance injunction has been granted against the Appellant not to create third party rights which is in operation for almost three years. Even otherwise pending the Suit any transaction made by the Appellant would be affected by the principle of *lis pendis*. As regards the apprehension expressed by the learned counsel for the Appellant regarding observations qua the agreement, the order for temporary injunction is an interlocutory order and therefore, any observations made therein are prima facie. As regards the contentions of the parties qua the agreement and the argument of the Appellant based on registration and stamp duty, along with the reply of the Respondent-Plaintiff thereupon are kept open to be adjudicated in the pending Suit. In view of this position, it is not necessary to interfere with the impugned order. The Appeal is accordingly disposed of with clarification as above.

(N.M. Jamdar, J.)