

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

WRIT PETITION NO.3692 OF 2016

Shri Sagar Anil @ Dilip Chavan & Ors. .. Petitioners

vs.

Shri Amar Shivajirao Chavan & Ors. .. Respondents

Mr.Sandeep s. Koregave for the petitioner

Mr.Kedar Lad i/b Mr.PD.Dalvi for the respondent no.3

CORAM : K. K. TATED, J.
DATE : JUNE 28, 2016

P.C.:

1 Heard the learned counsel for the parties.

2 By this petition, under Article 227 of the Constitution of India, petitioner plaintiff is challenging the order dated 4.3.2016 passed by 4th Joint Civil Judge, Senior Division, Kolhapur below Exhibit-18 in Regular Civil Suit No.183 of 2016 declining to grant the status quo order in favour of the plaintiff.

3 The learned counsel for the plaintiff submits that plaintiff filed Regular Civil Suit No.183 of 2016 for partition of the HUF property and for his separate share. He submits that in that suit, the plaintiff

preferred application below Exhibit-5 under Order XXXIX Rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 for injunction restraining the respondent defendant from creating any third party right, title and interest in respect of the suit property. He submits that as the defendant failed and neglected to file written statement within stipulated time and also reply to their application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908, the plaintiff preferred application under section 94 of the Code of Civil Procedure, 1908 for directing parties to maintain status quo. He submits that Trial Court rejected the application below Exhibit-18 only on the ground that the defendant no.3 made a statement before the court that they already executed the documents and created third party rights in favour of third party. He further submits that the Trial Court also recorded in paragraph 9 that the defendant nos.1, 4, 9 and 10 have given an undertaking that they are not going to alienate their properties till filing of their say to the application at Exhibit-5.

4 The learned counsel for the plaintiff submits that the Trial Court erred in coming to the conclusion that the application filed by the plaintiff below Exhibit-18 for status quo order cannot be granted because of the statement made by the defendants. He submits that if further third party rights are created by the defendants, then it will be very difficult for him to recover the said property as per the shares if any finalised at the time of hearing of Regular Civil Suit No.183 of 2016. Hence, the impugned order passed by Trial Court dated 4.3.2016 below Exhibit-18 is required to be set aside directing parties to maintain status quo in respect of the suit property.

5 Heard the learned counsel for the petitioner plaintiff at length. It is to be noted that in the present proceeding, the plaintiff has already filed application below Order XXXIX Rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 for an order of injunction restraining respondent defendant from creating any third party right, title and interest in respect of the suit property. During the pendency of the said application, plaintiff preferred present application under Section 94 of the Code of Civil Procedure, 1908 for an order of status quo. The contention of the plaintiff is that application filed by him is maintainable in view of the judgment of the Apex Court in the matter of *Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal, 1961 DGLS (SC) 353*. It is to be noted that in that authority, the Apex Court held that no party has a right to insist on the courts for exercising inherent jurisdiction. Court exercises its inherent jurisdiction only when it considers it absolutely necessary for the ends of Justice to do so. That was not the case in the present proceeding. In the present proceeding, plaintiff already filed application below Exhibit-5 for injunction and that was pending for hearing and final disposal on its own merits.

6 Considering these facts, Writ Petition filed by the plaintiff itself is not maintainable. The Trial Court has considered plaintiff's application on its own merits. In paragraph 8 and 9 court below recorded that defendant no.3 already created third party right and disposed of her property to the third party. Plaintiff has not added third party against whom he is also seeking order of status quo. Apart from that defendant nos.1, 4, 9 and 10 already gave undertaking that they are not going to

create third party rights till the filing of their reply to application below Exhibit-5.

7 Considering these facts, I do not find any substance in present Writ Petition to interfere with the well reasoned order passed by Trial Court dated 4.8.2016. Hence, Writ Petition stands rejected.

8 It is made clear that the Trial Court to decide Exhibit-5 application filed by the petitioner plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 on its own merits without influencing the order passed by this court.

JUDGE