

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

**APPEAL FROM ORDER NO.938 OF 2015
along with
CIVIL APPLICATION NO.1141 OF 2015
in
APPEAL FROM ORDER NO.938 OF 2015**

Vilas Krishnarao Basutkar .. Appellant/Applicant

Vs.

Dr.Prakash Krishnarao Basutkar & Ors. .. Respondents

Mr.Sachin Punde for the appellant/applicant.

Ms.Smriti Bandekar i/by M/s.Narayanan & Narayanan for the respondent no.3.

Mr.Rajeev Khanolkar a/w Mr.Chandrashekhar Shilore a/w Mr.Amit Joshi i/by M/s.Vijaykumar & Co. for the respondent no.4.

CORAM : R.D. DHANUKA, J.

DATE : 11th January 2016

P.C.

. By this appeal from order, the appellant seeks to impugn the order dated 7th May 2015 passed by the trial Judge refusing to grant ad-interim relief in the notice of motion inter alia praying for an injunction in respect of the suit property.

2. The appellant and the respondent no.1 are brothers. The respondent no.2 is the widow of late Shri Subhas Basutkar and sister-in-law of the appellant. It is the case of the appellant that by a Will executed by late deceased father of the appellant and the respondent no.1, the suit property is bequeathed in favour of the appellant. The respondent no.1 and the respondent no.2, however, have transferred the suit property in favour of the respondent no.3 on the basis of alleged

nomination form executed by the deceased father of the appellant and the respondent no.1.

3. In my prima facie view, the respondent no.1 and the respondent no.2 could not have derived any title on the basis of nomination form executed by the deceased father of the appellant and the respondent no.1. In my prima facie view, the respondent no.3 thus would not get any title in respect of the suit property. In my view, the learned trial Judge at least ought to have granted injunction against the respondents from creating further third party rights in respect of the suit property. The respondents (original defendants) have already filed affidavit-in-reply before the trial Court.

4. The learned trial Judge shall consider the matter in accordance with law after considering the affidavits filed by the respondents, plaint and affidavit-in-support of notice of motion.

5. I therefore pass the following order :-

- (i) Till disposal of the Notice of Motion No. 485 of 2015, there shall be ad-interim relief in terms of prayer clauses (c) and (d) of the Notice of Motion No.485 of 2015;
- (ii) It is made clear that the learned trial Judge shall decide the notice of motion in accordance with law and without being influenced by the observations made in the impugned order passed by the trial Court;
- (iii) It is made clear that the learned trial Judge shall decide the notice of motion also without being influenced by the observations made

in this order;

- (iv) Learned trial Judge shall make an endeavour to dispose of the notice of motion as expeditiously as possible and not later than four months from today;
- (v) Both the parties are directed to co-operate with each other and with the learned trial Judge in expeditious disposal of the notice of motion;
- (vi) Appeal from order is disposed of in aforesaid terms;
- (vii) In view disposal of the appeal, civil application does not survive and is accordingly disposed of;
- (viii) There shall be no order as to costs.

R.D. DHANUKA, J.