

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3876 OF 2016

IN

FIRST APPEAL NO. 1368 OF 2016

Shri Motilal G. Mathrani

..Applicant

Vs.

Smt Gita R. Pardeshi and Another

..Respondents

Mr. Abhishek Pungliya, for the Applicant.

Ms. Manjiri S. Parasnis, for the Respondent No.1.

**CORAM :- S.C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.**

DATE :- DECEMBER 21, 2016.

P. C.:

In this Civil Application, the Applicant-original Appellant states that the trial court had failed to appreciate that the claim of Respondent No.1 was time barred. She filed a miscellaneous application more than three years after 23rd October, 2002, when she had filed an objection to mutation entry recording the name of the applicant in the revenue record. These and several grounds on which the decree is assailed would make it

apparent that it is vulnerable, the First Appeal has been admitted. In such circumstances, the Respondents might create 3rd party rights, commence construction and / or alter the status-quo in some other manner, particularly in respect of 1/3rd share of the first Respondent in the land which is more particularly described in paragraph no.2 of this Civil Application.

2 Then, there are other grounds based on which the applicant claims an interim injunction. Interim injunction is to restrain the Respondents from alienating and / or creating third party rights from carrying out construction and from altering the status-quo in any manner in respect of the land in question.

3 The trial court in the impugned judgment has held that the appellant before us - original plaintiff having filed a suit and claiming diverse relief has failed to establish his claim. Rather a finding is rendered in the affirmative on an issue as to whether the Plaintiff practiced fraud on Defendant No.1 in execution of sale deed dated 28th August, 2001. Further, the plaintiff has failed to prove that he is lawful owner to the extent of 1/3rd share in the suit property. Finally and importantly, it is held that Defendant

No.2 is bonafide purchaser for value without notice. In the light of such findings and rendered on the issues framed in Special Civil Suit No.1015 of 2008, from which the Appeals arise, we do not think that the Appellant / Plaintiff is entitled to any interim relief. This Civil Application is entirely misconceived. It is therefore dismissed.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)