

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.46 OF 2013
IN
SECOND APPEAL NO.334 OF 2008

Shankar P. Pote	...Applicant
V/s.	
Laxmibai D. Jagdale & Ors.	...Respondents

Mr.S.A. Sawant for the Applicant.

Mr.R.M. Pedhe for the Respondent No.1.

Mr.A.P. Vanarse for the Respondent Nos.9 to 17.

CORAM : R.D. DHANUKA, J.
DATE : 7TH DECEMBER, 2016.

P.C. :-

1. By this civil application, the applicant (original plaintiff) seeks impleadment of the proposed respondent nos.9 to 17 as party to Second Appeal No.334 of 2008 and seeks an injunction against the proposed respondent nos.9 to 17 from creating any third party rights or changing the nature of the suit property till disposal of the second appeal.

2. Mr.Sawant, learned counsel appearing for the applicant invited my attention to the order passed by this Court on 25th April, 2008 in Civil Application No.539 of 2008 thereby granting *ad-interim*

relief in terms of prayer clause (d) of the said civil application, which was in respect of the injunction in respect of the suit property against the respondents and anybody claiming through them. My attention is also invited to the order dated 23rd September, 2008 passed by this Court. This Court while disposing of the said civil application considered the findings recorded by the first appellate Court that the plaintiff was not put in possession of the suit land under the agreement in respect of which specific performance was sought. This Court disposed of the said civil application and granted liberty to the plaintiff to file the civil application seeking any further relief in view of the applicant alleging before this Court that the other defendants were making attempt to construct upon the suit property. It is thus clear that the *ad-interim* order passed by this Court in terms of prayer clause (d) came to be vacated and not confirmed.

3. It is not in dispute that after this order passed by this Court, the respondent no.8 has already created third party rights in respect of the suit property in favour of the proposed respondent nos.9 to 17.

4. In this civil application, the applicant thus seeks impleadment of the proposed respondent nos.9 to 17 as party respondents and seeks an injunction against the proposed respondent nos.9 to 17 from creating third party rights and changing

the nature of the suit property. Mr.Sawant, invited my attention to the order dated 15th July, 2013, passed by this Court in this civil application, directing the respondents to maintain *status-quo* as on the date of the said *ad-interim* order till this civil application is heard.

5. It is submitted that the said *ad-interim* order passed by this Court was not continued till the disposal of the second appeal. He submits that if the proposed respondent nos.9 to 17 however, are allowed to create third party rights, the second appeal filed by the applicant would become infructuous.

6. Learned counsel for the proposed respondent nos.9 to 17 on the other hand submit that the *ad-interim* order passed by this Court in the earlier civil application in terms of prayer clause (d) is not confirmed by this Court while disposing of the said Civil Application No.539 of 2008. Learned counsel invited my attention to the order dated 15th July, 2013, passed by R.M. Savant, J. in this civil application and would submit that the applicant was fully aware that the *ad-interim* injunction granted by this Court in the earlier civil application was not confirmed by the said civil application. The applicant informed this Court that there was injunction order restraining the respondents from creating third party rights and inspite of the said *interim* injunction, the respondent no.8 has created third party rights. He submits that the premise on which this Court passed

the order of *status-quo* on the basis of the said statement made by the applicant itself was incorrect. In my view, there is substance in the submission of the learned counsel for the proposed respondent nos.9 to 17.

7. A perusal of the order passed by the Court in the said Civil Application No.539 of 2008 on 23rd September, 2008 clearly indicates that *ad-interim* order in terms of prayer clause (d) was not confirmed by this Court while disposing of the said Civil Application No.539 of 2008 on 23rd September, 2008. There was thus no injunction against any of the respondents from not creating third party rights. In my view, the applicant ought to have brought this fact to the notice of the Court which fact was suppressed by the applicant before this Court when order was passed on 15th July, 2013.

8. Insofar as the prayer for impleadment of the proposed respondent nos.9 to 17 in the second appeal is concerned, the learned counsel for the proposed respondent nos.9 to 17 has no objection if the proposed respondent nos.9 to 17 are impleaded as party respondents. The statement is accepted.

9. I therefore, pass the following order :-

a). The civil application is made absolute in terms of prayer clause (a). Prayer clause (b) is rejected for the reasons recorded aforesaid. The amendment to be carried out within two weeks from

today and the amended copy of the second appeal shall be served upon the advocate representing the respondents within two weeks from the date of carrying out amendment.

(R.D. DHANUKA, J.)