

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 480 OF 2016**

**IN
NOTICE OF MOTION NO. 2142 OF 2015
IN
SUIT NO. 1668 OF 2003**

**WITH
NOTICE OF MOTION NO. 2134 OF 2016**

Darayus R. Vazifdar	.. Appellant
V/s.	
Cyrus R. Vazifdar	.. Respondent.

Mr. S.M. Khaire for the Appellant/Applicant..
Mr. S.S. Dube for the Respondent.

**CORAM: DR. MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.**

DATE : 01 OCTOBER 2016.

P.C.

- 1] We have heard learned counsel for the appellant.
- 2] The facts which lead to filing of the present appeal are as under.
- 3] The respondent herein filed the suit for partition and separate possession of the share of the plaintiff against the present appellant. The appellant is the defendant in the said suit. On earlier occasion, Notice of Motion No. 2917 of 2003 seeking reliefs similar to the reliefs sought in Notice of Motion No. 2142 of 2015

came to be filed by the defendant offering his desire to buy out the share of the plaintiff based on the valuation said to have been made in the year 2005.

4] Learned counsel for the appellant brings to our notice the decision of the Hon'ble Supreme Court in ***Mrs. Malati R. Raut and ors. Vs. Mahadevo V. Joshi and ors.***¹, to contend that such right is vested in the defendant/appellant herein since he has come out with such offer similar to the facts in the cited decision. In the said decision, the so called offer by the defendant was during pendency of the matter before the appellate court after judgment and decree in the partition suit. Even otherwise as observed by the learned Single Judge in the impugned order having sought similar reliefs in the earlier notice of motion having filed both in the trial court as well as in the appellate court and in the light of not challenging the order of the Division Bench as quoted in the paragraph 4 of the impugned order, we are of the opinion that the appellant cannot seek as an interim measure to buy out share of the plaintiff at this stage. As observed in the earlier order dated 23 September 2005, the relief, if at all could be granted, has to be granted at the final hearing of the suit and not as an interim relief. So far as the parties before us the suit has not reached the finality and therefore, we are of the opinion that it is not just and proper to entertain similar application again and again. The parties are entitled to seek such intervention at the time of disposal of main matter on merits and the same could be

1 AIR 1991 Supreme Court 700

considered, if it is feasible and legal at the time of disposal of the suit on merits. Declining to intervene, we dismiss the appeal and the same is disposed of accordingly. However, we grant four weeks' time to the respondent-plaintiff to file affidavit before the trial court.

5] In view of disposal of main appeal, notice of motion does not survive and the same is disposed of accordingly.

(CHIEF JUSTICE)

(M.S.SONAK, J.)