

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

**CIVIL APPLICATION NO. 459 OF 2015
IN
CIVIL APPLICATION NO. 1339 OF 2014
IN
SECOND APPEAL NO. 552 OF 2014
AND
CIVIL APPLICATION NO. 1339 OF 2014**

Rashid Boman Parva & Ors. ...Applicants / Appellants
vs.
Iraj Sam Irani & Ors. ...Respondents

**AND
CIVIL APPLICATION NO. 1514 OF 2015
IN
SECOND APPEAL NO. 552 OF 2014**

Iraj Sam Irani & Ors. ...Applicants/Respondents

In the matter between

Rashid Boman Parva & Ors. ...Appellants
vs.
Iraj Sam Irani & Ors. ...Respondents

Mr.V.A. Thorat, Senior Advocate I/b. Pratik for Applicant.
Mr.N.V. Walawalkar, Senior Advocate with Mr.Rustom Pardewalla for
Respondent No.1 to 7.
Mr.Y.S. Jahagirdar, Senior Advocate with V.N. Walawalkar I/b. Rakesh P.
Saroj for Proposed Respondents.

CORAM : S.C. GUPTE, J.

9 MARCH 2017

P.C.:

Heard learned Counsel for the parties.

2 Civil application No.459/2015 is for impleadment of proposed Respondent Nos.10 to 13 and also amendment in the body of the accompanying civil application, namely, Civil application No.1339/2014, by incorporating certain averments in connection with proposed Respondent Nos.10 to 13. Civil application No.1339/2015 is for interim injunction restraining the Respondents as also the proposed Respondents from carrying out any construction activities on the suit properties or parting with possession thereof or creating any third party rights therein.

3 The suit properties consist of various plots of land. The Appellants (original Plaintiffs) had filed a suit for declaration of title to these properties and also claiming injunction against Respondent Nos.1 to 9 (original Defendants) restraining the latter from disturbing the Plaintiffs' possession. The suit was originally decreed by the trial court. In appeal filed by the original Defendants, the decree was set aside. From this order, the Plaintiffs have come in second appeal before this court.

4 When the second appeal was admitted by this court, ad-interim reliefs in terms of the civil application taken out were not granted. This court held that during the pendency of the civil suit, the Defendants sold their respective shares in the suit properties to third parties, who are represented today by proposed Respondent Nos.10 to 13, by registered sale deeds; that vacant and peaceful possession of the suit properties was also handed over by the Defendants to these third parties under the respective sale deeds; and that after the execution of the sale deeds, all four purchasers had entered into a partnership deed for carrying on construction and hotel business on the suit properties. On these facts, this court was not inclined to grant any ad-interim reliefs.

5 Civil Application No.459/2015 has now been taken out by the Appellants (original Plaintiffs) for impelading the four third parties, who have purchased the suit properties from the original Defendants. The civil application seeking injunction against the original Defendants from creating third party rights in the suit properties is sought to be amended by incorporating averments in respect of the sale deeds executed by the original Defendants in favour of the third parties, who are sought to be impleaded and also claiming reliefs of injunction against the third parties.

6 The application is presumably on the footing that the Appellants came to know of all the third party rights created by the original Defendants in favour of all these third parties only after affidavit in reply was filed by the original Defendants in Civil Application No.1339/2014 on 30 October 2014. The record of the case, however, indicates otherwise. It transpires from this record that these third party rights were created by the Defendants by three separate sale deeds, which were executed as far back as on 27 January 1998, 18 March 2005 and 6 June 2005; that after creating these third party rights, one pursis was filed on 20 January 2006 communicating the sale of the suit property by Defendant Nos.1, 2 and 4, whereas another pursis was filed on 7 July 2006 communicating the sale of the suit property by Defendant No.7 in favour of third parties. The record indicates that both these pursis were served on the Plaintiffs' Advocate. The Roznama of the trial court also indicates that the second pursis, namely, the pursis of 7 July 2006, was filed in the presence of the Plaintiffs and their Advocates. Besides this record, there is also a deposition of Plaintiff No.1 where he admits in his cross-examination that he was aware of the third party rights created by the Defendants in favour of these third parties.

In the face of these facts, it cannot possibly be disputed that the Plaintiffs were aware of the transactions in favour of third parties during the pendency of the suit itself. The suit was decreed on 13 April 2011. The Plaintiffs chose not to join these third parties as party Defendants so as to claim effective relief in respect of the suit properties. The first appeal proceeded before the lower appellate court in the absence of these third parties. The impugned judgment and order of the lower appellate court was passed on 14 March 2014. Even when the present second appeal was filed and the civil application was taken out for ad-interim reliefs, no attempt was made to join the third parties or claim any relief against them. As I have noted above, this court noted some of these facts in its order dated 5 November 2014 and accordingly, did not grant any ad-interim relief to the Appellants.

7 On these facts, though there is a case for impleadment of third parties, there is no case for granting any interim relief against them. The proposed Respondent Nos.10 to 13 have in their affidavit indicated that they have started developing the suit properties in the year 2010 and that this development was to the knowledge of the Appellants, who are residents of the same area. It is submitted by the proposed Respondents that they have completed construction of plinth of 33 row houses by spending substantial amount of money after borrowing funds from various lenders. One of the basic requirements for an Applicant for interim relief in a civil proceeding is that he must come to the court, firstly, with clean hands and secondly, within a reasonable time of accrual of the cause of action. The Appellants herein lack both these qualifications. The premise of their application today that they came to know of the third party rights created in favour of the proposed Respondents only after the civil

application was filed and the original Defendants' reply thereto was received by them, is very much suspect. As I have noted above, the record of the case clearly indicates otherwise. Secondly, considering the fact that these transactions were created between 1998 and 2006 and witnessed by pursis filed before the trial court in January and July 2006 and also considering the fact that all this was present to the mind of the Plaintiffs when the suit was tried before the trial court, it is too late in the day to apply for any interim reliefs in a second appeal. There is a gross delay on the part of the Appellants in coming before this court to seek such relief .

8 In the premises, the following order is passed :

(I) Civil Application No.459/2015 is allowed in terms of prayer clause (a). Amendment shall be carried out within two weeks from today;

(II) Civil Application No.1339/2014 is dismissed.

(III) Civil Application No.1514/2015 is stood over to 7 April 2017. The Respondents to this civil application to file their reply within three weeks. Rejoinder, if any, within one week thereafter.

(S.C. GUPTE, J.)