

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.546 OF 2012**

Altaf Naik since deceased Appellant
 Vs.
Mushtaque Naik & Ors. Respondents

Ms. Manjiri S. Parasnis, Advocate for Appellant.
Mr. Bhushan Mandlik i/by S.S. Patwardhan for Respondents
no. 1 to 6.

Coram : Smt. R.P. SondurBaldota, J.
Date : 8th February, 2017

P.C.

1 The matter has been placed on the board at the instance of the respondent for speaking to minutes of the order dtd. 23rd March, 2016. Mr. Mandlik, the learned advocate for respondents no.1 to 6 points out typographical error in the description of the property to which the appellant had sought claim. The property has been wrongly described as “survey no.26, Hissa No.12 of B-Pune”. The correct description would be “Survey No.36, Hissa No.12 Pune”. The correction in the order be carried out and the order be read accordingly.

(Smt. R.P. SondurBaldota, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 546 OF 2012

Altaf Naik, since deceased
by heirs, Seema NaikAppellant

V/s.

Mushtaque Naik and Ors.Respondents

* * * * *

Ms. Manjiri S. Parasnis, Advocate for the appellant.
Mr. S.S. Patwardhan, Advocate for respondents no.1 to 6.

Coram: - Smt. R.P. SondurBaldota, J.
23rd March, 2016

P.C. :-

1). This Appeal is directed against the order dated 27th January, 2012 by which the trial Court dismissed the appellant's application for modification of the interim order dated 7th March, 2009. The appellant is the heir of original defendant no.3 who had filed an application under Order 39 Rule 4 Civil Procedure Code for modifying the order of temporary injunction by which the appellant has been temporarily restrained from alienating the suit properties and/or from creating any third party interest therein pending

the hearing of the suit. The suit was filed by respondent no.1 and respondent no.10 (since deceased) for a declaration that the properties mentioned at para-1 of the plaint belong to the joint family of the parties to the suit and for permanent injunction to restrain the appellant (defendant no.3) from alienating the properties and a direction to him to give Accounts of the transactions undertaken by him in respect of the transport business, business of Naik Sea Food, Naik Fisheries, purchase of cars and accounts of foreign tours. By way of interim relief, respondent no.1 had sought injunction to restrain the appellant from entering into further transactions in respect of the properties described in the plaint and state the accounts.

2). The appellant had initially challenged the interim order by filing Appeal from Order No. 1037 of 2009 which was by the order dated 24th August, 2010 allowed to be withdrawn. It appears that, during the hearing of that Appeal from Order, the appellant had sought to rely upon some additional documents to support his claim of independent title to some of the properties. He was granted liberty to produce the documents

before the trial Court in support of the claim for modification of the interim order. Thereupon, the application at Exhibit-53 was filed. In his application at Exhibit-53, the appellant had not pleaded any subsequent event necessitating change in the order but had only relied upon the liberty granted to him by the order dated 24th August, 2010 by this Court. There was also no case of cause of undue hardship made out. In the absence of any change in the circumstances or of undue hardship, the appellant could not have moved the trial Court for modification of the interim order which was passed after hearing both the sides. Therefore, on this ground alone the appeal is liable to be dismissed.

3). The appellant has produced the compilation of documents relied upon by him as the documents that would establish his independent right to some of the properties. The documents consist of the income-tax returns, auditors report and the accounts for the purpose of payment of income-tax. The income-tax return, does not indicate in any way that the business of Naik Fisheries is the independent business of the

appellant. The other property to which the appellant seeks claim is, land at “**Survey No.36, Hissa No.12 Pune**”. The appellant claims only development rights in respect of that land and as such can have no claim or interest on the land. The third property is the property 1(c) to 1(e), where the appellant was the successful bidder in the tender notice published by The Poona Diocesan Corporation Pvt. Ltd. Admittedly, appellant was not the only person concerned with the tender notice. The brothers and sisters of the appellant are also concerned with that development. Thus, none of the documents produced by the appellant, on a prima-facie view of the matter, indicate his independent right to the property described. Hence, the trial Court has correctly rejected the application. The Appeal from Order is dismissed.

4). In view of dismissal of the Appeal from Order, Civil Application No. 1005 of 2012 does not survive. The same is accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)

Corrected pursuant to the speaking to minutes of the order dtd. 8th February, 2017