

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 62 OF 2017
IN
APPEAL FROM ORDER (ST) NO. 27963 OF 2016
WITH
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WITH
CIVIL APPLICATION (ST) NO. 27965 OF 2016

Ramkaran Khurmuri Yadav	...Applicant
<i>Versus</i>	
Vijay Thakkar & Ors	...Respondents

Mr Aseem Naphde, a/w Sanket Shah, i/b Akshar Lawas, for the
Applicant.
Ms Sarika Mehra, for Respondents Nos. 1 & 11.

CORAM: G.S. PATEL, J
DATED: 31st July 2017

PC:-

1. The delay in filing the first appeal is condoned. By consent, the appeal is taken up for final disposal.

2. The appeal is directed against an order of 25th July 2016 of the learned Judge of the City Civil Court allowing a Chamber

Summons taken out by one Bharat Vijan seeking impleadment as the 2nd Plaintiff. He said that by a deed of conveyance dated 24th December 2007 (the suit is of 2006) registered on 22nd January 2008, the Plaintiff, Vijay Thakkar, sold the suit property to one Madan Singh Bharara. That conveyance deed was annexed to the application. By another deed of conveyance dated 21st December 2009, registered on that very day, Bharara sold the suit property to the present Applicant, Vijan. The Plaintiff, Vijay Thakkar, also executed and assigned rights in respect of the suit property in favour of the Applicant.

3. The application for impleadment was thus cast under Order 22 Rule 190 and Order 1 Rule 10(2) of the Code of Civil Procedure 1908.

4. The 1st Plaintiff, Vijay Thakkar, had no objection.

5. The objection came from the 1st Defendant to the suit. He contended, as he does now, that the Applicant, although a transferee in respect of the same property, should file a separate suit. There is no merit whatsoever to this contention and it was rightly rejected by the learned judge.

6. The objection is said to be founded on Section 52 of the Transfer of Property Act, and on a decision of the Supreme Court in the case of *Survinder Singh vs Dalip Singh & Ors.*¹ The submission is

¹ (1996) 5 SCC 539

misconceived. In *Survinder Singh*, the transfer was by the defendant and not by the plaintiff; hence the discussion on *lis pendens*.

7. What is sought to be suggested is that the moment a plaintiff files a suit to protect any property, he automatically subjects himself to a self-imposed injunction restraining himself from transferring or assigning the rights of the property. That submission needs only to be stated to be rejected.

8. There is no substance in this appeal. It is dismissed. The civil application for stay does not survive and it is disposed of as infructuous.

(G. S. PATEL, J)