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

**APPEAL FROM ORDER NO.273 OF 2018
WITH
CIVIL APPLICATION NO.354 OF 2018
IN
APPEAL FROM ORDER NO.273 OF 2018**

Asmita A. Desai and ors

... Appellant.

V/s.

Ravindra Mantri (decd)
Through Legal heirs

... Respondents

Mbr. Abhijeet Rane, for the appellant.
Mr. Sandip J.Ghogare, for respondent No.2.
Mr. Padmanabh D. Pise, for respondent No.3.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 25th SEPTEMBER, 2018.

P.C. :

1] Heard learned counsel for the appellant and respondents.

2] This Appeal takes an exception to the order dated 10th February, 2015, passed by the City Civil Court, Mumbai, thereby dismissing the Notice of Motion No.2065 of 2014, in L.C.Suit No.149 of 2014.

3] The said Notice of Motion was taken out by the appellant herein, restraining respondent No.3 from creating third party

interests in the suit property or changing the nature of the suit property, till the decision of the suit.

4] The grievance of the appellants is that they are the owners of the suit property. The suit property was initially purchased by Bhaminibai Balaram Mantri and their uncle Balaram Gajanan Dadarkar. The appellants are the legal heirs of Bhaminibai Balaram Mantri. They are having equal share in the suit property. However, on the basis of Power of Attorney dated 16.9.2003, which was fraudulently obtained, respondent No.1 has transferred the suit property in favour of respondent No.2. Thereafter respondent No.2 has in his turn transferred it in favour of respondent No.3. Now respondent No.3 is trying to carry out construction thereon and creating third party interest and therefore, respondent No.3 be restrained from doing so. The trial Court, has however, rejected the said notice and hence the instant appeal.

5] The submission of learned counsel for the appellant is that the Power of Attorney, on the basis of which, the parties have created third party rights in the suit property itself is a disputed document, especially having regard to the fact that one Navnikant Mantri, whose signature is appearing thereon, was on that day admitted in hospital and was in ICU. Hence, it has to be inferred that the said Power of Attorney is not a legal and valid document and on the basis of same, if

any third party rights are created, they do not have any legal sanctity. It is submitted that the trial Court has, without adhering to this important fact of the admission of Navnikant Mantri in the hospital, rejected the Notice of Motion and hence the impugned order passed by the trial Court is required to be set aside.

6] Per contra, learned counsel for respondent No.3 has pointed out the sequence of events, which happened and it is submitted that the Power of Attorney dated 16.9.2003, is executed before the Special Magistrate. There are signatures of other co-owners on the same Power of Attorney. Merely contending that the signatures thereon are disputed is not sufficient, unless it is proved. It is submitted that the respondent No.1 has, way back in the year 2003 itself, entered into negotiations for transfer of the suit property with respondent No.2. A Public Notice to that effect was issued in the newspaper. Thereafter on 26.5.2005, agreement of sale was entered into by respondent No.1, in favour of respondent No.2. On 20.11.2008, the Deed of Confirmation was executed and it was also registered by paying the requisite stamp fee and then on 21.11.2008, respondent No.2 has executed Deed of Conveyance in favour of respondent No.3. The registered Deed of Confirmation is also executed on 7.5.2011. It is submitted that thereafter respondent No.3 has taken over the construction activity on the suit property and has entered into

agreements of sale with the prospective purchasers. Hence, at this belated state, if the order of injunction restraining respondent No.3 from creating of third party rights is granted in favour of appellant, it is respondent No.3, who will suffer irreparable loss and hardship and therefore, the trial Court has rightly rejected the said Notice of Motion.

7] Per contra, learned counsel for appellant submits that as order of ad-interim relief is not granted and if respondent No.3 has already created third party interest in the suit property and will continue to do so, then the appellant will suffer irreparable loss and hardship as the suit itself will become infructuous.

8] Having regard to the submissions advanced at Bar, by learned counsel for appellant and respondents, the documents on record definitely go to show that the Power of Attorney, was executed on 16.9.2003. It may be true that on that day one of the executant, namely, Navnikant was admitted in the hospital and he was discharged on 19.9.2003. However, if one sees the cause of admission, it only shows that he was suffering from sluggish reaction to deep stimuli, therefore, it cannot be said that on the very day when the Power of Attorney was executed he was not able to understand the contents of the Power of Attorney.

9] Apart from that, the Power of Attorney is also signed by

other four co-owners, therefore, mere disputing the signatures on the Power of Attorney cannot be sufficient to discard it at this prima facie stage, especially when on the basis of the said Power of Attorney, several transactions in respect of the suit property had taken place and that too, in public, openly, and not surreptitiously. From the year 2003 respondent No.1 has entered into transaction with respondent No.2. He has after issuing public notice executed agreement of sale, registered the same by Deed of Confirmation. Thereafter respondent No.2 executed Deed of Conveyance in favour of respondent No.3 in the year 2008 and then respondent No.3 has undertaken construction over the said plot.

10] At this belated stage, in the year 2014, if relief of interim injunction is claimed by the appellant to restrain respondent No.3 from carrying out construction or creating third party interests in the suit property, the trial Court was justified in holding that it is the respondent No.3 who will suffer irreparable loss and hardship. If appellant succeeds in proving the Power of Attorney being obtained fraudulently, his right, title in the suit property, he can still claim the same.

11] As the view taken by the trial Court is a probable view, in the Appeal in such discretionary order, no grounds are made out to

make any interference.

12] Hence the Appeal stands dismissed.

13] In view of dismissal of Appeal, pending Civil Application therein becomes infructuous and the same is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]