

In the matter between  
Vijay Anant Gangan ... Original Applicant  
Vs.  
Zenabibi Gulam Rasool Husseinbhai  
Jurullah and others ... Respondents

Dr. Birendra Saraf, Senior Advocate a/w. Mr. Ranjeev Carvatho,  
Mr. Prakash P. Shah and Ms Hiren Shah i/b. Prakash & Co. for  
Respondent No.10.

Heard Mr. Godbole, learned Senior Counsel for applicant in Civil Application No.280 of 2017, Mr. Dhakephalkar, learned Senior Counsel for original applicant in Civil Revision Application No.357 of 2017 and Dr. Saraf, learned Senior Counsel for respondent No.10.

3. In support of this Application, Mr. Godbole submitted that by registered Indenture dated 19.03.2008, ten vendors have conveyed their right, title and interest in favour of the applicant. He has also invited my

attention to the extract of property registration card which reflects the names of 10 vendors. He submitted that out of these vendors, vendors 8 to 10 executed alleged Deed of Conveyance in favour of respondent No.10 - Om Apollo Medicare Pvt. Ltd. whereunder respondents No.8 to 10 sold their 50% undivided right, title and interest in favour of respondent No.10. He submitted that the Suit was dismissed on 25.06.2004. Aggrieved by this decision, appeal was preferred before the appellate Bench of the Small Causes Court. During the pendency of the appeal, applications were made by the present applicant as also on behalf of the respondent No.10. By order dated 17.09.2014, application made by the applicant herein was disposed of for want of prosecution. As far as the application filed by the respondent No.10 is concerned, that was allowed by the appellate Court. He submitted that as the Suit was decreed in favour of predecessor in title of the applicant, there was no occasion for the present applicant to challenge the order dated 17.09.2014. He submitted that though there is a dispute as regards title of the present applicant in the pending Suit, there is no interim order in that Suit.

4. On the other hand, Mr. Dhakephalkar and Dr. Saraf opposed the application, Dr. Saraf submitted that the vendors of respondent No.10 executed agreement of sale in favour of respondent No.10 on 28.09.1995. NOC from the Income Tax Department was obtained. During the pendency of the appeal, on 03.04.2008, consent terms were arrived at between the vendors and respondent No.10 and in pursuance thereof, registered conveyance deed is executed in favour of respondent No.10. He submitted that the title of the applicant is under the cloud in a Suit instituted between the parties. Apart from that, the application made by the applicant was dismissed in default on 17.09.2015 which order is not challenged. He, therefore, submitted that the Application is

liable to be dismissed.

5. I have considered the rival submissions advanced by the learned Senior Counsel appearing for the parties. I have also perused the material on record. Applicant has relied upon the registered Indenture dated 19.03.2008 whereby ten vendors have conveyed their right, title and interest in favour of the applicant. Out of these 10 vendors, vendors 8 to 10 have conveyed their 50% undivided right, title and interest in the suit property in favour of respondent No.10. It is no doubt true that the title acquired by the applicant is disputed in a Suit. However, that issue cannot be agitated in a Suit for eviction and the Suit challenging the title will have to be decided independently. Prima facie, there is a registered deed of indenture in favour of the applicant. Hence, Application is allowed and the applicant be impleaded as respondent No.19 in the Civil Revision Application. It is made clear that I have not gone into the *inter se* dispute of title between the applicant and respondent No.10. Civil Application is disposed of accordingly.

**(R. G. KETKAR, J.)**

*Minal Parab*