

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3679 OF 2012

IN

FIRST APPEAL NO.1519 of 2012

Shri Bhay Laxman Waghmare (deceased)
through LR's Sadashiv Bhau
Waghmare (deceased) his LR's
Smt.Sharda Sadashiv Waghmare & ors .. Applicants

Versus

Shri Amruta Laxman Waghmare (deceased)
through LR's Vilas Amruta Waghmare
and others .. Respondents

Mr.Sachin D. Kadam for the applicants.
Mr.S.A.Sawant for respondent nos.1(a) to 1(e) 2b, 2a(3), 2a(4),
2a(2), 2c(a) to 2c(c), 2d, 2e, 2f and 2g.
Mr.Yashodeep Deshmukh i/b Rajesh Yagrikar for respondent no.6.
Mr.Karan Thorat for respondent nos.3A to 3H & 7.

CORAM : K.K. TATED AND

SARANG V. KOTWAL, JJ

DATED : 8th FEBRUARY, 2018

P.C. :

1 Heard learned counsel for the parties.

2 This application is preferred by original defendant nos.2 to 4 for restraining defendant no.1 from creating any third party right, title, interest in respect of the suit property i.e. Survey No.143/2 situate at village Wakad, Taluka Mulshi, District Pune.

3 Learned counsel for the applicant – original defendant nos.2 to 4 submits that the suit was filed by one Mr.Amruta Laxzman Waghmare for partition and separate possession of the suit premises. Suit property is described in paragraph no.1 of the plaint. He submits that during the pendency of the said suit, the applicant – defendant nos.2 to 4 preferred an application below Exhibit 129 in Regular Civil Suit No.565 of 1996 for an order of injunction restraining original defendant no.1 from creating any third party right, title and interest in respect of the suit property i.e. Survey No.143 Hissa No.2, Wakad, District Pune. He submits that after hearing both the sides, 6th Addl. Small Causes Judge and Senior Division Pune by order dated 14th November 2006 allowed the applicant's application below Exhibit 129. The operative part reads thus :

“ORDER

1 Application Exh.129 is allowed.

2 The defendant no.1, his agents, servants or any other persons acting on his behalf is hereby restrained from alienating or creating any third party interest in the suit property i.e. land bearing Survey No.143/2 Wakad, Pune, until further order.

3 Cost in cause”.

4 The learned counsel for the applicant submits that being aggrieved by judgment and decree dated 31-07-2012 passed by the trial court, they preferred the present First Appeal. He submits that during the pendency of suit in trial court, there was an order of injunction restraining the defendant no.1 from

creating any third party right, title and interest of land bearing Survey No.143, Hissa No.2. Hence, applicant preferred present application. He submits that this Court, by an order dated 30th October 2012 granted ad-interim relief to continuing the order dated 14th November 2006 passed by the trial court below Exhibit-129. He submits that in the interest of justice, this Hon'ble Court be pleased to continue the said order. He submits that if said order is not continued, irreparable loss will be caused to them in case the defendant no.1 disposes and/or creates any third party right, title or interest, in respect of Survey No.143/2. Then, nothing will survive in the present First Appeal.

5 Learned counsel appearing on behalf of original plaintiff submits that they have no objection if the present Civil Application is made absolute in terms of prayer clause (a).

6 Learned counsel appearing on behalf of defendant no.1 vehemently opposes the present Civil Application. He submits that there is no question of restraining the defendant no.1 from creating any third party in respect of land bearing Survey No.143/2. He submits that as on today, the defendant no.1 is in possession of the said property.

7 We have heard both the sides at length. In the present proceedings, initially, the trial Court by an order dated 14th November 2006 below Exhibit-129 restrained the defendant no.1 from creating any third party in respect of the land bearing Survey No.143/2. That order was continued by this Court in the present Civil Application by an order dated 30th October 2012.

8 It is correct that if the defendant no.1 creates third party rights in respect of the said property. Nothing will survive in the First Appeal preferred by original defendant nos.2 to 4.

9 Considering these facts, and as the interim order is already in force since 14th November 2006, we satisfy that applicant has made out a case for allowing Civil Application in terms of prayer clause (a).

10 Prayer clause (a) reads thus :

“Pending the hearing and final disposal of the First Appeal this Hon'ble Court be pleased to pass an order thereby restraining the respondents from alienating, transferring or creating any third party rights, changing the nature of the suit property i.e. the land survey No.143/2 situate at Village Wakad, Taluka Mulshi, District Pune.

11 Civil Application stands disposed of accordingly.

12 No order as to costs.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)