

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4009 OF 2015INFIRST APPEAL NO. 751 OF 2018INSPECIAL CIVIL SUIT NO. 820 OF 2007

Om Health Centres Private
Limited

....Appellant
(Original Plaintiffs)

V/s.
Vasanti Digambar Dandekar (Dead)
and Ors.

...Respondents
(Original Defendants)

* * * * *

Mr. Ranbir Singh with Mr. Hiren G. Shah I/by. M/s. Prakash
& Co., Advocate for the appellant-original plaintiff.

None for the respondents.

Coram : K.K. Tated, &

Sandeep K. Shinde, JJ.

Friday 28th September, 2018.

P.C. :

1. Heard Learned Counsel for the parties.
2. Though the respondents are duly served, no one appeared on behalf of them when the matter was called out.

By this Civil Application, the applicant-original plaintiff seeks an order of injunction restraining the respondents from creating any third party rights, interest in respect of the suit property as described in para-1 of the judgment dated 30th December, 2014 passed by the 2nd Joint Civil Judge, Senior Division, Thane in Special Civil Suit No. 820 of 2007. The applicant also seeks an order by prayer clause (a), the operation and implementation of the judgment and order dated 30th December, 2014 be stayed till the hearing and final disposal of the First Appeal.

3. During the course of arguments, Mr. Singh, the Learned Counsel for the applicant-original plaintiff submits that, except for an order of injunction, applicant is not pressing any other prayers in this Civil Application. Statement accepted.

3. The Learned Counsel for the applicant-original plaintiff submits that, they preferred Special Civil Suit No. 820 of 2007 in the Court of 3rd Joint Civil Judge, Senior Division, Thane for specific performance of agreement,

declaration and damages. He submits that, during the pendency of the said suit, the applicant preferred application for injunction under Order 39 Rules 1 and 2 read with Section 151 of the Civil Procedure Code dated 11th December, 2007. He submits that, the said application was allowed by the 3rd Joint Civil Judge, Senior Division, Thane by order dated 16th September, 2009 granting temporary injunction. The operative part of the said judgment reads thus :-

“1. Application for grant of temporary injunction is hereby allowed.

2. The defendants No.1, 2 & 3 are hereby restrained from creating third party interest in the suit property as mentioned in the annexures of the plaint, till decision of the suit.”

4. The Learned Counsel for the applicant submits that, pending the hearing and final disposal of the present First Appeal, in the interest of justice, this Hon'ble Court be pleased to restrain the respondents from creating any third party rights in respect of the suit property. He submits

that, if injunction is not granted and third party rights are created by the respondent during the pendency of the First Appeal, then nothing will survive in the present proceedings.

5. Considering the submissions made by the Learned Counsel for the applicant, inspite of service, no one appears for respondents when the matter is called out, the injunction order dated 16th September, 2009 passed by the 3rd Joint Civil Judge, Senior Division, Thane in Special Civil Suit No. 820 of 2007 and considering the averments made in the Civil Application, we are satisfied that the applicant has made out a case to continue the order dated 16th September, 2009 passed by the trial Court till the hearing and final disposal of First Appeal. Hence, the following order :-

(I) The order dated 16th September, 2009 passed by the 3rd Joint Civil Judge, Senior Division, Thane in Special Civil Suit No. 820 of 2007 be continued till the hearing and final

disposal of the First Appeal.

*(ii) Civil Application stands disposed off
accordingly.*

(SANDEEP K. SHINDE, J)

(K.K. TATED, J)

Neeta
Shailesh
Sawant

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Neeta Shailesh Sawant
Date: 2018.10.04
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