

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.4689/2013

in

First Appeal No. 208/2011

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. G. H. Keluskar for the Applicant
Mr. Chintan Shah I/b. Prashant Jadhav
for the Respondent

CORAM: K.K.TATED, J.

DATED : AUGUST 28, 2019

P.C.

1 Heard. By this Civil Application, the Applicant is seeking an order of injunction restraining the Respondent from creating any third party right, title and interest in respect of the suit property.

2 The learned counsel for the Applicant submits that if third party right is created during pendency of the First Appeal, nothing will survive in the present proceedings. He submits that the First Appeal has already been admitted. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the present Civil Application.

3 On the other hand the learned counsel for the Respondent has vehemently opposed the Civil Application. He has filed Affidavit in Reply on 16.03.2014. He submits that the First Appeal itself is not maintainable. He submits that the First Appeal ought to have been filed before the District Court. Hence, there is no question of allowing the Civil Application. He submits that though the First Appeal was admitted by this court on 15.04.2011, the Civil Application is filed in the year 2013. The Applicant has not disclosed any reason as to why the Applicant has filed the Civil Application after more than two years from the date of admission of the First Appeal. Moreover, during pendency of the matter before the Trial Court, there was no injunction against the Respondent from creating any third party right, title and interest in respect of the suit property. Therefore, the Civil Application is liable to be dismissed with costs.

4 Heard both sides. It is to be noted that the First Appeal will take its own time for hearing and final disposal on

merits and if Respondent creates third party right, title and interest in respect of the suit property nothing will survive in the present proceedings. Whether the First Appeal is maintainable or not will be decided at the time of deciding the First Appeal.

5 Considering these facts, following order is passed:

a. Civil Application is allowed in terms of prayer clause (a), which reads thus:

(a) to restrain the Respondent herein from creating any rights in favour of any third party right in respect of the suit to any third party.”

b. The Civil Application stands disposed of accordingly.

c. No order as to costs.

(K.K.TATED, J.)