IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.15863 OF 2022
IN SA/110/2007
PRABHAKARRAO GANGADHARRAO LOLGE THR LRS. KAMLABAI ANDORS.
VERSUS
JAGDISH GANGADHARRAO LOLGE AND ORS
...
Advocate for Applicants : Mr. Nitin Jagadale h/f. Mr. V.D.Salunke
Advocate for Respondent Nos. 1 , 2.1 to 2.5 : Ms. Anjali Vajpai Dubey
Advocate for respondent No.3 : Mr. N.S. Chaudhary.

CORAM : RAJESH S. PATIL, J.

DATE : 21st December, 2022.

ORDER :-

1. This civil application is filed by appellants who are original defendants in the suit. In this civil application a prayer is made that the original plaintiff be restrained from alienating or creating third party interest in the suit property.

2. The original plaintiff has filed a reply to this civil application. It is the case of the original plaintiffs that the dispute is between the brothers and her client is successful before the appellate court alongwith two other brothers. She further states that since the second appeal is admitted even though there is stay to the impugned judgment of the appellate court, nothing prevents her client from creating third party interest in respect of his share. She further states that the present applicant is selling of properties which have fallen to his share, which can be seen from Annexure R-2 to her reply. She further states that she has

enclosed a copy of the agreement for sale dated 6th August, 2022 to one Anand Hendre. The said agreement of sale is only to the extent of the share of her client i.e. original plaintiff No.1. She has further pointed out that the said agreement of sale at internal page No.3 very clearly states that the property which is offered for sale is, as on is where is basis. She further points out that there is a clear mention of the second appeal pending in High Court in the said agreement of sale. She, therefore, mentions that her client cannot be prevented from creating third party interest of his share.

3. The learned advocate for respondent No.1 in civil application, who is the original plaintiff No.3 states that he has no objection if the respondent No.2 original plaintiff no.1 is allowed to create third party interest as far as his share is concerned.

4. In view of the submissions made above, I am satisfied that the respondent No.2 herein (original plaintiff No.1) can be allowed to create third party interest only to the extent of his share. The sale deed so to be executed should clearly mention about the pending litigation and same would be on, as is where is basis. The advocate for respondent No.2 original plaintiff No.1, on instructions, gives such undertaking to this court.

5. At this stage, learned advocate for the applicant in civil application, i.e. original defendant states that suit was initially dismissed and an appeal there-against was preferred only by the plaintiff No.3. No such appeal was preferred by the plaintiff No.1 against him but present civil application has been filed.

6. According to me, suffice would be the purpose, if the advocate for the applicant is permitted to add the purchaser of share of plaintiff No.1 i.e. Mr. Anand Hendre, as party respondent in the present second appeal.

7. In view of the same, civil application is dismissed. Needless to mention that the ad-interim relief granted earlier stands vacated.

(RAJESH S. PATIL, J.)

grt/-