

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.2712 OF 2022
IN
FIRST APPEAL NO.429 OF 2022**

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.02.14
10:46:47
+05:30

Khozema Tayebali Tawawala

... Applicant

V/s.

Ibrahim Gulamhusein Tawawala,
deceased through L.R.s.

Asmabai wd/o Ibrahim Tawawala & Ors. ... Respondents

Mr. Sachindra Shetye with Mr. Ashwin Bhadang, Mr. Robin Fernandes, Mr. Aayush Shah and Ms. Halima Merchant for the applicant.

Mr. Rajesh Kachare with Mr. Amit Potnis and Mr. Sandeep Suryavanshi i/by Tamhane & Co. for respondent no.1.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 13, 2023

RC.:

1. During the pendency of the suit, this Court by order dated 27th July 2001 rejected application of the plaintiff restraining defendants from creating third party rights, however, made such transfer of third party subject to the decision in the suit.

2. The suit of the plaintiff has been dismissed by the impugned judgment. The first appeal is admitted.

3. Since during the pendency of the suit, there was no interim

relief restraining defendants from creating third party rights, the plaintiff cannot be placed in a better position after dismissal of the suit. Therefore, relief restraining defendants from creating third party rights in terms of prayer clause (b) cannot be granted; however, creation of third party rights created during the pendency of the appeal shall always be subject to protection under section 52 of the Transfer of Property Act, if it is satisfied that the ingredients of section 52 of the Transfer of Property Act are satisfied.

4. In that view of the matter, the interim application is disposed of in terms of aforesaid observations. No costs.

(AMIT BORKAR, J.)