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

INTERIM APPLICATION NO. 18906 OF 2022

IN

FIRST APPEAL NO. 1128 OF 2022

Bharat Dasharath Takale

.....Applicant

Vs.

Abdul Razak A. Majid (Deceased)
thr. L.R.s Farooq A. Razak Qureshi
and others

.....Respondents

Ms. Pooja Thorat a/w Mr. Amar Bodake a/w Mehek Chhabaria for
applicant.

Mr. Surel S. Shah i/b Mr. Ketan Joshi for respondents.

**CORAM : K. R. SHRIRAM &
RAJESH S. PATIL, JJ.**

DATED : 21st FEBRUARY 2023

PC. :

1 Application is for restraining respondents from creating any third party rights in respect of suit property bearing survey no. 46/1/1/2 adm. 1H67.7R; situated within the limits of Sub-Registrar, Maval (the suit property)

2 Applicant has filed this first appeal challenging the Judgment and Decree dated 31.03.2022 passed by CJSD Vadgaon, Maval, District: Pune in suit filed by applicant, being Special Civil Suit No. 96/2022 (Old Special

Civil Suit No. 478/2012) (the said suit) whereby the learned Judge has dismissed the suit.

3 Applicant is the original plaintiff whereas respondents are the original defendants in the said suit. The said suit was filed praying for a decree of specific performance against respondents in respect of a piece and parcel of the property situated within the limits of sub-registrar, Maval, bearing survey no. 46/1/1/2 adm. 1H67.7 (the suit property).

4 Applicant has filed this application seeking stay and/or directions against respondents to not create third party rights/interest in respect of the suit property.

5 According to applicant the suit property was owned and possessed by one Abdul Razak A Majid (deceased) who was desirous to sell the suit property. Accordingly, applicant learnt about the said proposal and contacted the deceased. After due negotiations, the deceased agreed to sell the suit property and applicant agreed to purchase the same for an amount of Rs. 9 crores. Accordingly deceased and applicant entered into an MOU dated 15th September 2008. The terms and conditions of the said MOU provided, interalia:

I. Deceased agrees to sell the property at Rs. 9 Crores.

II Balance consideration was to be paid within 180 days from the date of agreement.

III The deceased assures that the title was clear, perfect and marketable and as such he has not sold and/or transferred the said property to any other person.

IV The deed of conveyance of property was to be executed by the owner in favour of applicant or nominees.

V Upon completion of sale transaction of the property, deceased shall put applicant in actual and physical possession of the suit property.

VI All the expenses regarding registration and stamp duty to be borne by applicant.

6 Upon executing the said MOU, applicant paid a sum of Rs. 11 Lacs to deceased in cash. Accordingly, applicant demanded documents of the said property from deceased. After receipt of 7/12 extracts applicant noticed that the said suit property was standing in the name of partner M A and Co.. Upon enquiry, deceased informed applicant that due to some mistake of the revenue authority, name of the company was recorded but in fact in reality he was the owner. Thereafter on several occasions applicant enquired with the deceased about corrections in the revenue record,

however, the deceased kept giving lame excuses. Most of the time the deceased lived in Mumbai and therefore he kept delaying it. Applicant finally learnt about the death of the deceased in March 2010. Thereafter, applicant continued to pursue the legal heirs of the deceased who are also the original defendants in the said suit. However, even defendants avoided to execute the sale deed. Applicant therefore had a reasonable apprehension that defendants would create third party interest in the suit property. Thus, applicant preferred said suit for specific performance and also preferred a separate application for granting injunction.

7 The original defendants, i.e., the respondents herein filed written statement denying the claim. Issues were framed, evidence was recorded and finally the suit was dismissed by the impugned order and judgment.

8 In our view, no case for interim relief is made out because first of all admittedly:

- (a) Applicant's suit for specific performance has been dismissed after a full trial where the court has held that there was no evidence of applicant paying any amount to the deceased and no tax returns were also filed for the relevant period;
- (b) there was no injunction in force for the entire period the suit was

pending in the trial court, i.e., from 2012 till 31st March 2022.

(c) Except bald averments in the application, there is nothing in the application for granting the prayer as sought, and

(d) Applicant's allegation is that there was a public notice in some local newspaper inviting objections on 7th June 2022 but still this application for relief as noted earlier was affirmed on 20th June 2022 and the appeal has been lodged only on 30th June 2022 and there is nothing to indicate what happened in the last 8 months.

9 Application dismissed.

10 Appeal to come up for admission as per its turn.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)