

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 328 OF 2024
WITH
INTERIM APPLICATION NO. 7891 OF 2024

Dr. Sachinkumar Sukumar Suganavar	... Appellant/ Applicant
Versus	
Shri. Rajgonda Parisa Suganavar And Others	...Respondents

Mr. Ashutosh Kulkarni a/w Akshay Kulkarni for the Appellant.
None for Respondents.

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CORAM : M.M. SATHAYE, J.
DATE : 26th NOVEMBER 2024

P.C. :

1. Heard learned counsel for the Appellant, who is original Plaintiff. Suit is filed for declaration and injunction against his family members and certain financial institutions.

2. By the impugned orders dated 19.01.2024 and 22.02.2024, the application below Exh.5 seeking injunction against private Respondents, not to create 3rd party interest or encumbrance and seeking injunction against the financial institutions not to proceed with sale of part of the suit properties for recovery of loans, are rejected.

3. Learned counsel for the Appellant has tendered a copy of a partition Deed dated 03.11.2014 asserting that the partition which has taken place in the family, is recorded thereunder by way of Remembrance Deed and as such its registration is not compulsory. He

submits that under the said Partition Deed, the family had agreed to dispose of certain specified properties for repayment of the loans taken by the family members. He submits that by order dated 08.12.2023, the learned Trial Judge had initially restrained the private Respondents from creating 3rd party interest and from creating further encumbrances in respect of the suit property. However, by the impugned orders, the application is ultimately rejected. He submits that during the pendency of the suit, injunction is necessary, at least to the extent of Applicant's share in the suit properties.

4. Perused the impugned orders. So far as private Respondents are concerned, their say is recorded in para 7 of the impugned order dated 22.02.2024. It appears that relationship between parties is not disputed. A stand is taken that there is no partition by metes and bound and partition deed relied upon by the Appellant is disputed for not being registered. In para 13 of the said impugned order, it is in fact recorded that 7/12 extracts filed on record by the private Respondents reveals 'specific area next to concerned person'. This *prima facie* lends credence to the Appellant's theory of partition. Non registration of the partition deed seems to have weighed with the Trial Court. Assuming that partition has not taken place, undivided share of the Appellant will have to be considered appropriately.

5. In the aforesaid facts and circumstances, it is necessary to hear the private Respondents/family members as well as financial institutions.

6. Issue notice to the Respondents, **returnable on 17.12.2024**. Hamdast is permitted. Applicant is also at liberty to serve privately and

file affidavit of service.

7. By way of ad-interim relief till the next date, if the Respondent Nos. 1 to 15 create any 3rd party interest or encumbrance over the suit properties or part thereof, it will not bind the share of the Applicant.

(M.M. SATHAYE, J.)