

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

**APPEAL FROM ORDER NO. 554 OF 2024
WITH
INTERIM APPLICATION NO. 10936 OF 2024**

Abhijit Vishwas Phanse

....Appellant

V/S

Vijay Bajirao Phanse & Ors.

....Respondents

Mr. Prashant S. Karande a/w Mr. Praful S. Pawar, Mr. Sudam S. Patil for the Appellant

Mr. Akshay Pawar for Respondent No. 1

Mr. Kunal Bhanage a/w. Mr. Vasim Siddiqui for Respondent Nos. 2 to 4

CORAM : M. M. SATHAYE, J.

DATED : 14th DECEMBER 2024

P.C.:

1. Heard learned Counsel for the parties.
2. The Appeal is filed challenging the order dated 13/06/2024 passed by City Civil Court, Greater Bombay refusing ad-interim relief sought by the Appellant in Draft Motion in S. C. Suit No. 5025 of 2024. By the said Motion, the Appellant is seeking injunction restraining the Respondents from disposing, alienating or creating 3rd party interest in the suit property and further injunction restraining them from changing the user of the suit property and for appointment of the Court Receiver.
3. It is noted at the outset that the parties are at the stage of ad-interim and the motion is not yet decided. Parties are closely related, in as much as the Applicant is the son of Vishwas, who has filed suit for partition against

his mother, brother, sister alongwith uncle Vijay. The suit is filed for partition of 1/8th share in suit property being Phanase Building - ground plus 4 structure comprising of 17 commercial and 73 residential tenants and 5 tenements occupied by owners. The Applicant is claiming through his father Vishwas having ½ share in the suit property.

4. Learned Counsel for the Applicant contended that he was deliberately kept out of various eviction proceedings filed by his father and uncle Vijay in as much as, after the death of his father, only the Appellant was kept out and his mother, brother and sister were brought on record. He has pointed out that the Appellant was required to file applications for getting himself impleaded in those eviction proceedings. He has relied on many such orders. He submits that the relationship between the parties is not disputed and therefore the Respondents cannot be permitted to create 3rd party interest and earn out of the suit property in total disregard to the share of the Appellant and therefore interim relief as sought is necessary.

5. Attention of the Court is invited to the order of this Court dated 30/04/2024 passed in Civil Revision Application No. 223 of 2024 contending that the Respondents are about to receive possession from the Sahyadri Sahakari Bank Ltd. in respect of certain commercial premises out of the suit property, under minutes of the order, that were filed in the said Civil Revision Application. Apparently there is dispute about whether this order dated 30/04/2024 was passed after due notice to the Applicant or not. However, this Court is refraining from entering that controversy, considering the relationship between the parties and the stage of ad-interim, at which the suit stands.

6. *Per contra*, learned Counsel for the Respondent Nos. 2 to 4 (remaining

legal heirs of Vishwas) contended that he can also point out from the record that the Applicant has also been indulging in creating 3rd party interest in respect of part of the suit property and as such, the similar consideration is necessary for his clients also when the motion is heard. He submitted that their claim is based on will of father Vishwas regarding which probate proceedings are pending. It is submitted that Appellant is simply interested in keeping the dispute alive to arm-twist other parties.

7. During the course of the argument, as the controversy between the parties unfolded, Mr. Bhanage, learned Counsel for the Respondent Nos. 2 to 4, on instructions from the Respondent Nos. 3 (who is present in the Court and who is stated to be a constituted attorney of Respondent Nos. 2 & 4) submitted that in order to put the controversy at rest, without prejudice to their rights and contentions, the Respondents are willing to offer to Appellant his $\frac{1}{4}$ th share in the share of his father Vishwas.

8. Learned Counsel for the Respondent No. 1 appearing for the uncle of the Applicant, submitted that his share is not at all concerned with the present dispute and he should not suffer, because this dispute is between the legal heirs of Vishwas, *inter se*.

9. About the offer made by learned Counsel for the Respondent Nos. 2 to 4, learned Counsel for the Applicant, on instructions from the Applicant (who is present in the Court) submitted that for consideration of the offer, necessary details about the earnings from the suit property are required to be disclosed / furnished and on receipt thereof, the offer will be considered. Learned counsel for the Respondents submit that similarly, the Applicant must also disclose / furnish details of his earnings from part of the suit property.

10. Considering the overall facts and circumstances, in my view, since the motion is pending, limited protection is necessary to be granted. However, at the same time, this is a fit case where parties should be referred to Mediation, before the motion is heard.

11. Hence, the **Appeal from Order** and **pending interim application** are **disposed of** by passing the following order:

(a) The impugned order dated 13.06.2024 is set aside. Pending the motion, both the Appellant and the Respondents are restrained from creating 3rd party interest in the suit property or part thereof, without the permission of the Trial Court.

(b) By consent of the parties duly communicated through their respective Counsel, Smt. Anuja Prabhudessai, retired Judge of this Court, is appointed as Mediator to mediate the dispute between the parties. Necessary mediation fees / charges, if any, to be settled by parties directly with the Mediator.

(c) Parties to approach the said Mediator within a period of 2 weeks from today.

(d) The Mediator is requested to submit necessary report preferably by 28/02/2025.

(e) If the mediation fails, parties are at liberty to move the Trial Court for further hearing in the pending Motion, which will be heard and decided on its merits, in

accordance with law, without being influenced by the ‘*without prejudice* offer’ of the Respondents recorded above in the present order or any other observations made herein. In such circumstances, rival contentions of all the parties are kept open.

(f) Lastly, it is clarified that possession of the part of the suit property, which the Respondents are supposed to receive from Sahyadri Sahakari Bank Ltd. as per order dated 30.04.2024 passed by this Court, will be received by Respondents on behalf of the Appellant also, *without prejudice* to the rights and contentions of both the sides.

(M. M. SATHAYE, J.)