

MJ Jadhav

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 244 OF 2024
WITH
INTERIM APPLICATION (ST) NO. 415 OF 2025
IN
APPEAL FROM ORDER NO. 244 OF 2024**

Farhan Mohammed Yusuf MilwalaAppellant

Vs.

Memuna Mohammed Ashfaque Memon
and Ors.Respondents

Ms. Farha Khan a/w Tabish Jamdar i/b Usama Memom for the
Appellant.

CORAM : GAURI GODSE, J.

DATE : 13th JANUARY 2025

ORDER:

1. Heard learned counsel for the appellant.
2. This appeal is preferred by the plaintiff to challenge the dismissal of the application for temporary injunction pending the suit.
3. Learned counsel for the appellant submits that the appellant has invested huge amount as a partner in the partnership firm named as Sara Construction. She submits that the predecessor in title of the defendants was a partner of the partnership firm along with the

plaintiff. She further submits that the partnership firm was subsequently converted into proprietary concern of the predecessor in title of the defendants. She submits that in view of the investments made by the plaintiff there is a right created in favour of the plaintiff in respect of the suit properties. She therefore submits that if the suit properties are alienated during the pendency of the suit serious prejudice would be caused to the plaintiff. She thus submits that the plaintiff is entitled to an injunction during the pendency of the suit restraining the defendants from creating any third party rights.

4. I have perused the impugned order and the pleadings. A perusal of the plaint indicates that the plaintiff is seeking co-ownership to the extent of 50% in respect of the suit properties. Based on the declaration of co-ownership, the plaintiff seeks partition and possession of 50% share. By alternative prayers, the plaintiff seeks recovery of amount from the defendants.

5. By the impugned order, the application for temporary injunction is rejected on the ground that the plaintiff was unable to point out any right title interest in the property on the ground of payment allegedly made by him. Learned Judge has observed that the plaintiff even, prima facie, failed to establish his alleged joint ownership in respect of

the suit properties.

6. A perusal of the reasons recorded in the impugned order indicates that some of the suit properties are already transferred prior to the institution of the suit as contended by the defendants and they are actively engaged in the development of the suit properties.

7. From the rival pleadings of the parties, it appears that the plaintiff seeks to recover the amount invested by him in the partnership firm. The plaintiff has pleaded in the plaint that the partnership firm in which he claims right is converted to propriety concern of the predecessor in title of the defendants. Thus, it appears that based on the plaintiff's investment in the partnership firm, he seeks right in respect of the suit properties, which are admittedly acquired by defendants' predecessor in title in his individual capacity. The conveyance in respect of the suit properties is placed on record along with the appeal. It is not disputed by the plaintiff that the suit properties were acquired by defendants' predecessor in title in his individual capacity. Thus, based on the alleged investment of the plaintiff in a partnership firm, the plaintiff would not be entitled to seek any injunction against the defendants in respect of the suit properties, which are admittedly acquired by defendants' predecessor in title, in his individual capacity.

8. Thus, in view of the aforesaid the plaintiff has failed to establish any, prima facie, right title or interest in the suit properties to claim any temporary injunction against the defendants, who are admittedly claiming title through the absolute owner of the suit properties.

9. In view of the aforesaid fact, I do not see any reason to interfere in the impugned order. The appeal is devoid of any merits. Hence, the Appeal is dismissed.

10. In view of dismissal of the appeal, pending application is disposed of as infructuous.

[GAURI GODSE, J.]