

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION (ST) NO. 299 OF 2026
WITH
APPEAL FROM ORDER (ST) NO. 297 OF 2026

Francis Edward Misquitta

Applicant / Appellant
.. (Org. Plaintiff)

Versus

George Edward Misquitta & Ors.

Respondents
.. (Org. Defendants)

-
- Mr. I.K Tripathi a/w Mr. Virendra Tripathi, Advocates for Applicant
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 8, 2026

P. C.:

1. Not on board. Mentioned by way of filing a praecipe dated 08.01.2026.
2. Heard Mr. Tripathi, learned Advocate for Applicant - Org. Plaintiff.
3. Present Interim Application seeks urgent indulgence of Court. Admittedly Applicant / Appellant who is the Plaintiff in the fresh Suit which has been filed is having $\frac{1}{4}^{\text{th}}$ share in the suit property. Applicant / Plaintiff was successful in obtaining injunction in the previous Suit bearing S.C. Suit No. 713 of 2020 filed by him for partition against Defendant Nos. 1 to 3 who are his brothers and sisters. As he failed to place on record the valuation of the suit property for a period of more than three years, the said injunction was vacated in 2023.

4. Mr. Trivedi would submit that taking advantage of vacating of the previous injunction order, brother of Applicant / Plaintiff who is Defendant in the Suit proceedings created third party rights in favour of Defendant No. 4. He would submit that Defendant No. 4 thereafter amalgamated the Suit plot with the neighbouring plot and took steps to develop the same for which the Corporation has granted permission. Being aggrieved, Applicant / Plaintiff approached the Trial Court seeking injunctive reliefs against the Corporation. Learned Trial Court has passed a detailed order, *inter alia*, taking into account grievance of Applicant / Plaintiff but has refrained to injunct the Corporation for the reasons stated therein. Admittedly there is no privity between the Applicant and Corporation. The only nexus is the undivided 1/4th share of the Applicant in the suit property.

5. Mr. Tripathi informs the Court that pursuant to the statutory permissions received by Defendant No. 4 development of the property has commenced. He would submit that if third party rights are created, Plaintiff's 1/4th share in the suit property will get defeated and he will not be able to secure the same. Hence he would submit that to the extent of protection of his 1/4th right, the Developer needs to be restrained and in his usual fairness he also informs the Court that the Developer can undoubtedly carry on construction subject to securing his undivided 1/4th share.

6. After reading the impugned order and hearing the submissions made by Mr. Tripathi, *prima facie* what is submitted by Mr. Tripathi appeals to the Court. However before any order is passed, Defendant No. 4 needs to be heard by the Court. Equally the other co-Defendants who are brother and sisters of Applicant / Plaintiff are also required to be heard because they have created third party rights in favour of Defendant No. 4 by virtue of the registered Deed of Conveyance to the exclusion of the Applicant / Plaintiff by taking advantage of the vacating of the injunction. It is seen that in the agreement executed with Defendant No. 4, reference is given to the previous Suit also.

7. In view of the above, issue notice to the Respondents made returnable on 17.01.2026. Humdast permitted. In addition to Court's notice, Applicant / Appellant is directed to serve copy of the AO along with Interim Application and copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date.

8. Respondents shall take cognizance of what is stated herein above because equity demands that the undivided 1/4th share of the Applicant / Plaintiff needs to be protected somehow or the other. In that view of the matter, Respondents shall apprise the Court on the next adjourned date and more specifically Defendant No. 4 –

Developer shall apprise the Court as to how he proposes to secure the 1/4th share of the Applicant / Plaintiff subject to the outcome of the Partition Suit filed by the Plaintiff in the year 2020 which is pending before the Trial Court. Defendant No. 4 is called upon to give adequate security to secure the share of the Plaintiff failing which the Court will have to step in and pass appropriate orders. Needless to state that after hearing the Developer appropriate orders can also be passed to the Trial Court to expedite the hearing of the Partition Suit in order to end the ignominy of the parties before the Court.

9. Leave to file compilation is granted by the Court to Mr. Tripathi.

Copy of the same shall be served on Defendants in advance.

10. Stand over to **17th January, 2026.**

[MILIND N. JADHAV, J.]

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