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

**APPEAL FROM ORDER (ST) NO. 21009 OF 2015
WITH
CIVIL APPLICATION (ST) NO. 21677 OF 2015
IN
APPEAL FROM ORDER (ST) NO. 21009 OF 2015**

Shri Kanubhai Waghela ...Appellant
Vs.
Shri Bharat K. Waghela ...Respondent

Ms. Preeti Thobhani for the Appellant
Mr. Vijayprakash Yadav for the Respondent

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 20TH AUGUST, 2015**

P.C. :

1. The parties are father and son. The father has executed a gift deed in favour of the defendant as also his younger brother as donee. The gift deed is registered. The younger brother lives with the father. The defendant, who is the elder brother, resides in Ahmadabad with his family. His family is shown to consists of his wife, his son who is employed and his daughter who is married. The defendant has written a letter to the Society that he has shifted to Gujarat permanently. He has given his residential address. Hence the defendant is not in possession of the suit premises.

2. The defendant would certainly be entitled to 1/2 share in the suit premises upon a registered gift deed in law. The premises is stated to be going in redevelopment. Hence the defendant would be entitled to 1/2 share in all benefits of redevelopment also. This would be subject to the cancellation of the gift deed in the trial of the suit filed in the Bombay City Civil Court.
3. However since the defendant is permanently residing in Ahmadabad, it would be prudent for the defendant to maintain peace with his father and not enter upon the suit premises and cause needless further disputes. The impugned order directs the parties to maintain the position of the suit premises and not to dispossess the party in actual possession. The father as also the younger brother are admittedly in actual possession. The defendant has himself shown that he is permanently settled in Gujarat at the address stated by him. Hence that part of the order needs no interference except for a clarification that the defendant and his family members, servants and agents shall not enter upon the suit flat pending the suit.
4. Both the parties are also directed in the impugned order not to create any third party interest, which would protect the interest of all the parties.

5. Consequently upon the above clarification the appeal is disposed off accordingly.
6. Notice of motion as also all other interim applications are disposed off accordingly.

(ROSHAN DALVI, J.)