

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.5198 OF 2008
WITH
CIVIL APPLICATION NO.369 OF 2015
IN
FIRST APPEAL NO.1981 OF 2008

Shripad Sharad Bhandekar	... Applicant
(<i>In the matter between</i>)	
Sugandha Suresh Sarode	... Appellant
vs.	
Shripad Sharad Bhandekar and Others	... Respondents

Mr. Asha Purohit a/w. Mr. Pise, for the Appellant.
Mr. Shripad Sharad Bhandekar, the Applicant/Respondent No. 1
in person.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **28th OCTOBER, 2015**

P.C.:

. The Appellant is the original Plaintiff in the Suit, who has filed the Civil Application No. 5198 of 2008 for the order of injunction for restraining the Defendants from alienating, selling, disposing or taking any action in respect of transfer of Flat No. 9, First Floor, Ramkunj Co-Operative Housing Society, R.K. Vaidya Road, Dadar (w), Mumbai- 28.

2. This Court by its order dated 21st October, 2008 has granted ad-interim relief in terms of prayer clause (a). The said application is still pending. The Respondent No. 1/Defendant No. 1 filed the Civil Application No. 369 of 2015 praying that the said interim relief granted by the order 21st October, 2008 in Civil Application No. 5198 of 2008 be vacated.

3. The Respondent No. 1/party in person submits that the Appellant has executed a gift deed on 7th July, 2005 in respect of the suit premises i.e. the flat in Ramkunj Co-Operative Housing Society in his favour and 8-9 months thereafter she made declaration before Notary on 13th February, 2006 for the rectification of the gift deed. The Suit filed by her for declaration in respect of the gift deed is dismissed by the judgment and order dated 28th August, 2008 by the learned Judge, City Civil Court, Mumbai. He submits that under such circumstances, the gift deed is in force and the ad-interim stay granted by this Court be vacated.

4. The learned counsel for the Appellant submits that the gift deed executed by the Appellant was conditional and it was made with

an understanding that in lieu of the premises which is occupied at present by the Applicant/Respondent No. 1 would be transferred in the name of the Donner and the same would be given in favour of the Appellant. However, it was not done so after she executed a gift deed. So she filed a Suit for cancellation of the said gift deed. She prays for the interim stay pending the Appeal.

5. Perused the relevant portion of the impugned judgment. The applications filed by both the parties are before the execution of the gift deed dated 7th July, 2005. The parties were occupant of the premises which are occupied by them today. If the stay is not granted then the Appeal will become infructuous and the Appellant will become roofless. Hence, considering this position, the Civil Application No. 5198 of 2008 is allowed in terms of prayer clause of (a) pending the Appeal.

6. In view of this, nothing remains in the Civil Application No. 369 of 2015. The same stands dismissed. Place the First Appeal for admission on 9th December, 2015.

(MRS.MRIDULA BHATKAR, J.)