

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.138 OF 2015
WITH
CIVIL APPLICATION NO.620 OF 2015

Vishakha Vishwas Shinde ... Appellant
Vs.
Ravikant Mahadeo Shinde and another ... Respondents

Ms Gauri Godse for Appellant.
Mr. Sanjiv A. Sawant for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : MAY 05, 2015

P.C. :

Heard Ms Godse, learned Counsel for appellant and Mr. Sawant, learned Counsel for respondent No.1.

2. By this Appeal under Section 100 of the Code of Civil Procedure, 1908, original defendant No.2 has challenged the judgment and decree dated 11.08.2014 passed by the learned Ad-hoc District Judge-1, Kalyan in Civil Appeal No.136 of 2010. By that order, the learned District Judge quashed and set aside the judgment and decree dated 19.07.2010 passed by the learned Joint Civil Judge, Senior Division, Kalyan in Special Civil Suit No.108 of 2006 and decreed the Suit. The learned District Judge directed the appellant-defendant No.2 to handover vacant and peaceful possession of the flat more particularly, described in paragraph 2 of the plaint to the respondent No.1-plaintiff within 2 months from the date of the order.

3. Ms Godse, upon taking instructions from the appellant, who is present in the Court, states that the appellant is not pressing this Appeal in view of the fact that the respondent No.1 has agreed to pay amount of Rs.2,50,000/- as also grant time of 6 months i.e. upto 30.11.2015 for

vacating the suit flat.

4. Mr. Sawant states that respondent No.1 will deposit amount of Rs.2,50,000/- in this Court under due intimation in writing to the learned Counsel for the appellant on or before 23.11.2015. Ms Godse assures that within 1 week from today, appellant will file undertaking in this Court incorporating therein that,

- a. she is in possession of the suit flat along with her minor mentally retarded daughter and nobody else is in possession;
- b. appellant has neither created third party interest nor parted with possession of the suit flat;
- c. appellant will hereafter neither create third party interest nor part with possession of the suit flat;
- d. appellant will handover vacant and peaceful possession of the suit premises to the respondent No.1 on or before 30.11.2015;
- e. appellant will withdraw Regular Civil Suit No.231 of 2006 pending before the Civil Court, Ulhasnagar on or before 30.06.2015.

5. In view thereof, Second Appeal is disposed of as not pressed in the following terms:

- (i) Judgment and decree passed by the learned District Judge in Civil Appeal No.136 of 2010 is maintained;
- (ii) Respondent No.1 will deposit amount of Rs.2,50,000/- in this Court on or before 23.11.2015 under due intimation in writing to the learned Counsel for the appellant;
- (iii) Appellant shall file undertaking in the aforesaid terms within 1 week from today and copy thereof shall be given to the other side. Undertaking given by the appellant is accepted;
- (iv) After handing over possession of the suit flat to the respondent No.1, appellant is at liberty to withdraw the amount deposited by

respondent No.1 in this Court, unconditionally, by producing possession receipt;

(v) In case the appellant does not handover possession of the suit flat to the respondent No.1 on or before 30.11.2015, she will not be entitled to withdraw the amount deposited by the respondent No.1 and respondent No.1 will be at liberty to proceed in the matter in accordance with law.

(vi) Order accordingly.

6. In view of the disposal of the Second Appeal, nothing survives in Civil Application No.620 of 2015 and the same is disposed of accordingly.

(R. G. KETKAR, J.)

Minal Parab