

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 1303 OF 2014
WITH
CIVIL APPLICATION NO. 3828 OF 2014**

Yasmeen Fakir Mohammed	... Appellant/Applicant
Vs.	
Anib Anthony D'Monte	... Respondent
And	
Mrs. Antonieta Verdes D'Monte	
Ms. Florinda Anib D'Monte	... Obstructionists

Mr. M.C. Hegde, Advocate for the appellant/applicant.
Ms. Aileen S. Marques, Advocate for respondent no. 1.
Mr. Anthony T. Marques a/w. Mr. David Joseph, Advocate for respondent no. 2.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **2nd December, 2015**

P.C.:

Admit.

Civil Application No. 3828 of 2014

This Application is moved to stay the order passed by the learned Judge of the City Civil Court, Mumbai on 13th October, 2014 in Chamber Summons No. 770 of 2010.

2. The Appeal is filed against the order dated 13th October, 2014 in Chamber Summons No. 770 of 2010 which was taken out by the decree holder in S.C. Suit No. 955 of 1982 where it was prayed that warrant of possession is to be issued against the proposed obstructionist.

3. It is submitted that the appellant is the original plaintiff, whose suit for possession is decreed. While disposing of the Application made by the plaintiff, the learned Judge of the City Civil Court by an order dated 14th October, 2014 directed the obstructionist not to create third party interest till expiry of appeal period. The said order is continued till today.

4. The learned counsel for the obstructionists/respondents submitted that the obstructionist Florinda has full right over the property. She has become the owner of the property by virtue of gift deed as per the entire first floor and two rooms and entire open space of the land, as this property was gifted to her by a Gift Deed dated 5th October, 2009 which was given by Rev. Fr. Bosco Penha/defendant no. 2 and Margaret Penha/defendant no. 3. He submitted that these two persons were deleted earlier from the proceedings and, therefore, their property was kept out from the decree. Accordingly, regarding the joint ownership, the trial Court has given the order in favour of the obstructionist. The said finding is not challenged by the appellant/original plaintiff and this is how the obstructionists are in lawful possession.

5. The learned counsel for the applicant submitted that the gift deed dated 5th October, 2009 through which obstructionist is claiming the right in the property, was not produced and the appellant challenges the said gift

deed.

6. In view of this, earlier order of interim protection to continue pending Appeal.

7. Civil Application is disposed of.

(MRIDULA BHATKAR, J.)