

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO. 31217 OF 2015
ALONGWITH
CIVIL APPLICATION (ST) NO.31221 OF 2015
IN
APPEAL FROM ORDER (ST) NO. 31217 OF 2015

Bharati Rajesh Bhave) Aged 44 yrs. Occupation: service) Residing at Flat No.15,) Ajanta Om Uma Maheshwar) Co-Operative Housing Soc.Ltd.,) Plot No.51/54/56, Sector -1) Chheda Nagar, Mumbai 400 089)	 Appellant / Applicant
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VERSUS

1. Vijay Shankar Bhave) Aged 77 yrs., Occupation: Retired) Residing at Flat No.15,) Ajanta Om Uma Maheshwar) Co-Operative Housing Soc.Ltd.,) Plot No.51/54/56, Sector -1) Chheda Nagar, Mumbai 400 089)	
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2. Vasudha Vijay Bhave) Aged 72 yrs.,) Residing at Flat No.15,) Ajanta Om Uma Maheshwar) Co-Operative Housing Soc.Ltd.,) Plot No.51/54/56, Sector -1) Chheda Nagar, Mumbai 400 089)	
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3. Rajesh Vijay Bhave) Aged 44 yrs., Occupation :Service,) Residing at Flat No.15,) Ajanta Om Uma Maheshwar)	
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**Co-Operative Housing Soc.Ltd.,)
Plot No.51/54/56, Sector -1)
Chheda Nagar, Mumbai 400 089)**

..... Respondents

Mr.V.S.Kapse for the Appellant.

Ms.Uma Wagle for Respondent Nos. 1 and 2.

CORAM : R.D. DHANUKA, J.

DATED : 3rd DECEMBER, 2015

Oral Judgment :-

By this appeal from order, the appellant has impugned the order passed by the trial judge on 3rd October, 2015 allowing the notice of motion filed by the respondent nos. 1 and 2 and directing the appellant to quit the suit flat along with her son and all her belongings within two months from the date of passing of the said order.

2. Mr.Kapse, learned counsel appearing for the appellant submits that the appellant was married to the respondent no.3 who is son of the respondent nos. 1 and 2 and has been staying in the suit property as her matrimonial home. He submits that the suit property was purchased jointly by the husband of the appellant with respondent no.1 though the said property is standing in the name of the respondent no.1 exclusively. He submits that the respondent no.3 who is husband of the appellant has also filed a false affidavit against the appellant to support respondent nos. 1 and 2. It is submitted that by the impugned order dated 3rd October, 2015, the learned trial judge has passed an order directing the

appellant to quit the suit flat which order is in the nature of final decree at the notice of motion stage.

3. It is submitted by the learned counsel for the appellant that the appellant and her son cannot be directed to quit themselves from the suit property. She has already filed a complaint before the learned Matropolitan Magistrate at Vikhroli under the provisions of Domestic Violence Act against the respondents and the same is pending. He submits that if the impugned order passed by the learned trial judge is not set aside and/or stayed, the appellant not having any other premises where she can occupy, she will be on street along with her son.

4. Mrs. Wagle, learned counsel for the respondent nos. 1 and 2 on the other hand supported the prima facie observations made by the learned trial judge. The learned counsel produced the original of the share certificate in respect of the suit flat for perusal of this court and would submit that when the suit flat was purchased by the respondent no.1 which is his self acquired property, husband of the appellant was hardly seven years old and there was thus no question of husband of the appellant contributing any amount for acquisition of the suit property.

5. Learned counsel invited my attention to the affidavit dated 10th September, 2015 filed by the husband of the appellant in the Notice of Motion No.2719 of 2015 before the trial court and would submit that the allegations of the appellant

that the suit property was acquired jointly by the respondent no.3 with respondent no.1 are denied by the respondent no.3. She submits that the husband of the appellant has clarified the position that he was minor when the suit property was acquired by the respondent no.1 and had not contributed any amount for purchase of the said property. She submits that the appellant herein is working in Indian Post GPO Mumbai and has been earning more than Rs.65,000/- per month with other allowances and benefits including house rent allowances. She submits that the appellant has been harassing her clients who are aged and are not keeping good health. It is submitted that the appellant has no right, title or interest of whatsoever nature in the said self acquired property of the respondent no.1. Even if the appellant has any right of occupation in the matrimonial home, the right would be only against the respondent no.3 and not in the self acquired property of the respondent no.1.

6. Learned counsel placed reliance on the judgment of the Supreme Court in case of ***S.R.Batra and another vs. Taruna Batra (2007) 3 SCC 169*** and more particularly paragraphs 27 to 31. She states that the learned trial judge after adverting the judgment of Supreme Court in case of ***S.R.Batra (supra)*** has rightly passed a mandatory order and injunction against the appellant and her son to quit the suit premises having *prima-facie* found that she has no semblance of right in the suit property.

7. Learned counsel on instruction states that parents of the appellant has a house at Alibaug and she can shift with her son to stay with her parents. She submits on instruction that the brother of the appellant has independent house at Navy Nagar, Chembur.

8. Mr.Kapse, learned counsel for the appellant made an attempt to distinguish the judgment of the Supreme Court in case of ***S.R.Batra (supra)*** on the ground that the facts before the Supreme Court in the said judgment were totally different. He submits that the appellant has been in possession of the suit property along with her husband as her matrimonial house and she cannot be dispossessed and that also under a mandatory order and injunction.

9. I have perused the original share certificate produced for my perusal by the learned counsel for the respondent nos. 1 and 2 which *prima-facie* indicates that the suit flat was purchased by the respondent no.1 sometime in the year 1974. When the suit property was purchased, the husband of the appellant was seven years old. I am thus not inclined to accept the submission of the learned counsel for the appellant that the husband of the appellant had contributed any amount in acquisition of the said flat in the year 1974.

10. Supreme Court in case of ***S.R.Batra (supra)*** has held that the daughter-in-law is entitled to claim right to reside only if the said property is owned by her husband or if it is joint family property of which the husband is a member. In the

said judgment, Special Leave Petition was filed by the mother-in-law of the wife which was her self acquired and exclusive property. The Supreme Court has held that the said property could not be called a “shared household”. It is held that the “share household” would mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. It is held that the said property was a self acquired property and was not “share household” and thus the daughter-in-law has no right to stay in the suit property.

11. In my prima facie view since the suit property acquired by the respondent no.1 is his self acquired property and the husband of the appellant has not contributed any amount for acquisition of the suit property, the appellant who claims to be the wife of the son of the respondent no.1 cannot claim any independent right of residence in the said self acquired property of the respondent no.1. In my view the principles laid down in the judgment of Supreme Court in case of ***S.R.Batra (supra)*** applies to the facts of this case. I am respectfully bound by the judgment of Supreme Court.

12. Insofar as allegations of the appellant that her husband had contributed any amount for acquisition of the suit flat along with his father is concerned, the husband who was the best person in addition to the father who could controvert such allegation has filed an affidavit in the proceedings before the trial court

confirming that he was a child when the property was acquired by his father and there was no question of contributing any amount for acquiring the said flat. In my prima-facie view the appellant thus cannot be allowed to urge that the suit property was acquired by her husband jointly with the respondent no.1 (father-in-law). The appellant cannot claim any right in the self acquired property of her father-in-law including right of residence.

13. A perusal of the said affidavit filed by the husband of the appellant also prima-facie indicates that the appellant has been working with the General Post Office and has been drawing a salary of about Rs.65,000/- per month. The husband of the appellant is unemployed. Learned counsel for the appellant could not dispute the statement made by the learned counsel for the respondent nos. 1 and 2 that the parents of the appellant have their own house at Alibaug and that his client has been earning a handsome salary including house rent allowance.

14. There are also serious allegations about misbehavior of the appellant including allegation of assault on the respondent nos. 1 and 2 who are aged and are not keeping good health. Though the court cannot pass the mandatory order of this nature thereby directing the occupant to remove herself from the suit property at the interim stage, however there is no absolute bar in the court passing mandatory order if the circumstances so are warranted as in this case.

15. I have perused the impugned order passed by the learned trial judge very

minutely. In the facts and circumstances of this case, in my prima-facie view the appellant has no right of any nature whatsoever in the suit property including right of residence. In my view the trial judge was right in passing a mandatory order of injunction for removal of the appellant which order was warranted in the facts and circumstances of this case. It is for the appellant to make an alternate arrangement for her accommodation. The appellant is already drawing separate house allowances from her employer. In my view there is no infirmity with the order passed by the learned trial judge. The learned trial judge has already granted two months time to the appellant to remove herself from the suit property from the date of the said order. At the request of the learned counsel for the appellant, the appellant is granted further four weeks time to vacate the suit premises. It is made clear that time to vacate of four weeks is granted on the condition that during this period the appellant or her son shall not harass the respondent nos. 1 and 2 and will maintain law and order in the house. Considering the facts and circumstances of this case, the trial court is directed to expedite the hearing of the suit.

16. The written statement shall be filed within eight weeks from today.

17. The learned trial judge shall make an endeavor to dispose of the suit within one year from the date of the completion of the pleadings.

18. All parties are directed to co-operate with each other and with the learned trial judge in the expeditious disposal of the suit.

19. Appeal from order is devoid of merits and is accordingly dismissed. No order as to costs. In view of the dismissal of the appeal from order, civil application does not survive and is accordingly disposed of. No order as to costs.

[R.D. DHANUKA, J.]