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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****APPEAL (L) No. 317 of 2015.****IN****NOTICE OF MOTION No. 1270 of 2014****IN****SUIT No. 786 of 2014**

- | | |
|---|---|
| 1) Shri Premnath Rama Shetty |] |
| age 54 years, adult, Hindu. |] |
| 2) Smt. Sarita Premnath Shetty, |] |
| age about 50 years, adult, Hindu. |] |
| 3) Ms Ruvi Premnath Shetty, |] |
| age about 24 years, Adult, Hindu. |] |
| All at present residing at Flat No.1, |] |
| Baria House, Also known as "Sakina Manzil", |] |
| 184, Modi Street, Mumbai 400 001 |] |

..APPELLANTS.

(Orig. Defendant Nos.1 to 3)

Versus

Smt. Vasanti Rama Shetty,]
aged 76 years, Hindu, Occup Housewife]
Indian Inhabitant, having permanent address
at 184, Baria House, also known as Sakina]
House, 1st Floor, Modi Street, Mumbai-400 001

and also having address at :

114D, Libra Housing Society, Off. Marve Road]

Malwani, Malad (West), Mumbai 400 095]

..RESPONDENT.

(Orig. Plaintiff)

ALONG WITH

NOTICE OF MOTION (L) No. 946 of 2015

AND

ALONG WITH

NOTICE OF MOTION (L) No. 947 of 2015

IN

APPEAL (L) No. 317 of 2015.

1) Shri Premnath Rama Shetty]

age 54 years, adult, Hindu.]

2) Smt. Sarita Premnath Shetty,]

age about 50 years, adult, Hindu.]

3) Ms Ruvi Premnath Shetty,]

age about 24 years, Adult, Hindu.]

All at present residing at Flat No.1,]

Baria House, Also known as "Sakina Manzil",]

184, Modi]

Street, Mumbai 400 001]

..APPLICANTS.

IN THE MATTER BETWEEN :-

1) Shri Premnath Rama Shetty]

age 54 years, adult, Hindu.]

- 2) Smt. Sarita Premnath Shetty,]
 age about 50 years, adult, Hindu.]
- 3) Ms Ruvi Premnath Shetty,]
 age about 24 years, Adult, Hindu.]
 All at present residing at Flat No.1,]
 Baria House, Also known as “Sakina
 Manzil”, 184, Modi]
 Street, Mumbai 400 001] **..APPELLANTS.**

Versus

Smt. Vasanti Rama Shetty,]
 aged 76 years, Hindu, Occupation Housewife]
 Indian Inhabitant, having permanent address
 at 184, Baria House, also known as Sakina]
 House, 1st Floor, Modi Street, Mumbai 400 001
 and also having address at :
 114D, Libra Housing Society, Off. Marve Road]
 Malwani, Malad (West), Mumbai 400 095] **..RESPONDENT.**

....

Mr Ashok Shetty a/with Ms Rita Joshi for the Appellants.
 Ms Rajani Iyer, Senior Counsel a/with Mr R.A.Shaikh for the
 Respondent.

CORAM : V.M.KANADE & A.R. JOSHI, JJ.

RESERVED FOR ORDER: 31st March, 2015.

DATE OF PRONOUNCEMENT :16th April,2015.

JUDGMENT (PER: A. R. JOSHI, J)

1) Heard rival submissions on earlier dates on this appeal preferred by the present appellants / original defendants, challenging the judgment and order dated 30th January, 2015 passed by the learned Single Judge of this Court in Notice of Motion No. 1270 of 2014.

2) At the threshold, it must be mentioned that initially the present appellants filed a writ petition before this Court challenging the said order dated 30th January, 2015. However, during the initial arguments when a challenge was raised on behalf of the present respondent, original plaintiff, the present appellants prayed for conversion of the said writ petition into an appeal. Said request was allowed by us. Pursuant to the same, a separate appeal memo is prepared and filed and which is being disposed of by the present order.

3) Again, at the threshold, it must be mentioned that as the issue involved between the parties who are the son and mother i.e. appellant no.1 and present respondent, being the dispute regarding possession over the suit flat taken before the Single Bench of this Court under the Suit No. 786 of 2014, filed

under Section 6 of the Specific Relief Act, we thought it fit to discuss the matter in detail with the respective Counsel in order to ascertain the possibility of an amicable settlement between the parties. In spite of our endeavour, there was no fruitful outcome and the parties chose to argue on the issue involved as to the possession over the suit flat. Consequently, the arguments were heard and matter is being disposed of.

4) Present respondent filed a Civil Suit bearing No. 786 of 2014 seeking relief under section 6 of the Specific Relief Act against the present appellants who are respectively her son, daughter-in-law and grand-daughter. Without going into much details as to the dispute between the parties over the property left by the late husband of the present respondent and the late father of the present appellant no.1, suffice it to say that there was a sort of family arrangement arrived at between the parties i.e. the present respondent and her three daughters and two sons and daughter-in-law of one more deceased son. In fact, said family arrangement was in pursuance of the Will prepared and registered by the father of present appellant no.1 and husband of the present respondent and who is since deceased, died on 27th March, 2014.

5) The suit under Section 6 of the Specific Relief Act was filed on 2nd September, 2014 by the present respondent against the present three appellants. In the said suit notice of motion No. 1270 of 2014 was taken and at the ad-interim stage there was an order of the Single Judge of this Court for appointment of Court Receiver on 17th November, 2014, directing him to take symbolic possession and appointing the present respondent i.e. the original plaintiff as the agent of the Court Receiver. It was also recorded in the said order that the present appellants have no objection for the original plaintiff to stay in the said flat.

6) After the above arrangement by way of appointment of the Court Receiver with the present respondent as an agent, some incident happened on 6th December, 2014 at the suit flat and there was some hot exchange of words between the parties and also subsequently there was exchange of letters addressed to each other. In the meantime, notice of motion was adjourned from time to time and in the meantime the present appellants chose to file affidavit of two younger sisters of appellant no.1, purportedly supporting the case of the appellants. At this juncture, the case of the appellants i.e. the stand taken by them in the said suit is required to be mentioned inasmuch as according to them, in view

of the family arrangement the original keys of the suit flat were handed over to the appellant no.1 and it so happened in presence of other family members including the respondent and her youngest son and daughters. As such, according to the appellants, they were put in possession of the suit flat by the respondent herself and as such there was nothing like trespass over the suit flat or ousting of the possession of the respondent.

7) The Notice of Motion No. 1270 of 2014 was finally heard and disposed of by the learned Single Judge of this Court vide order dated 30th January, 2015. By the said impugned order Notice of Motion was allowed in terms of prayer clause (a) and actual physical possession of the suit flat was directed to be returned to the present opponent i.e. the original plaintiff. At this juncture, it must be mentioned regarding factual position at the time of passing of said impugned order. That time, admittedly, the present appellants made a prayer for temporary stay of the said order for the period of six weeks and also undertook to vacate the suit flat by the end of said period. In spite of such undertaking there was no compliance and the suit flat still remained in the possession of the appellants and as such the present appeal has been preferred before the Court challenging the said order.

8) Though during the arguments, learned Counsel appearing for the appellants vehemently argued on various aspects as to the effect of the family settlement arrived at between the parties and allegedly giving of the keys of the suit flat to appellant no.1 by his mother i.e. present opponent original plaintiff, it is to be ascertained whether prima facie respondent original plaintiff was in physical possession of the said suit flat. In order to ascertain this position, arguments advanced on behalf of both the sides are required to be considered. On behalf of the appellants much reliance was placed on the family arrangement and in fact according to the own case of the appellants said family arrangement though show that the suit flat came to the share of present respondent along with its tenancy rights, it is the further argument on behalf of the appellants that simultaneously along with the Will of the father of appellant no.1, his mother i.e. present respondent also executed a Will and both the Wills were registered with Sub-Registrar of Assurances at respective serial numbers 11104 and 11105. By pointing this out, it is canvassed before us that according to the Will of the present respondent, after her demise the suit flat is to come to the share of appellant no.1. At this juncture, it must be mentioned that such type of arrangement

as argued before us as to bequeathing the property in the suit flat in the name of appellant no.1 is definitely to take effect after the demise of the respondent and not during her life time. However, it is argued on behalf of the appellants that during the life time of the respondent itself and in pursuance of the family arrangement the keys of the suit flat were given to appellant no.1 by the respondent. It is further argued and brought to the notice of this Court by pointing towards the contents of the affidavit sworn by two younger sisters of appellant no.1 that this position alleged by the appellants has been endorsed by the sisters, resultantly leading to the position that the appellant no.1 was put in occupation of the said suit flat by the respondent herself. In view of this, it was further argued that there was no question of ousting the possession of the respondent as the appellant was in actual physical possession and that also to the knowledge and consent of the respondent, his mother.

9) Counter to the above argument, the learned Senior Counsel for the respondent-mother invited our attention to the averments made in the plaint. Our attention is also drawn towards the contents of the various documents which were annexed to the plaint and brought before the learned Single Judge. Without going

much into the details as to the description of these documents, suffice it to say that these documents depict the position that the respondent was in actual physical possession of the suit flat, more so when it was specifically given to her disposal in the family arrangement. The copies of the electricity bills also clearly mention that the said flat was rarely in use and admittedly the respondent had gone to her native place after the demise of her husband and kept the said suit flat under lock and key. The fact that there was hardly any electricity consumption for the said flat as seen from the electric bills endorse the arguments advanced on behalf of the respondent that the said flat was not in actual use and occupation of the appellants after the demise of the father of appellant no.1 as claimed by them. This factual position falsifies the plea taken on behalf of the appellants that they were given the keys of the flat and were all along staying there since the demise of father of appellant no.1.

10) Apart from the above, there is still another circumstance to be looked into as to lodging of the police complaint by the respondent against the appellants, alleging that on 14th August, 2014 the lock of the suit flat was broken by the appellants and they forcibly entered the said flat. It is a factual

position that on 15th August, 2014 a complaint was lodged with MRA Marg Police Station, Mumbai by the present respondent against appellant Nos. 1 and 2 and the police registered NC complaint under NC Case No. 731 of 2014. The respondent also lodged a written complaint addressed to the Senior PI, MRA Marg Police Station, Mumbai specifically alleging that the appellants entered the suit flat on 14th August, 2014 and broke open the lock and when she arrived at Mumbai and tried to enter the suit flat she was threatened with dire consequences. During the arguments, learned Senior Counsel for the respondent also referred to the statements of the witnesses recorded by the police, copies of which are attached to the plaint. In our considered view, this factual position and the documents annexed to the plaint fortify the case of the plaintiff / present respondent and as such it can be gathered that the respondent was in possession of the suit flat and that the appellants have forcibly entered the said flat on or about 14th August, 2014.

11) In view of the above, there is nothing to entertain the present appeal challenging the order of Notice of Motion No. 1270 of 2014 and hence the present appeal is dismissed and accordingly disposed of with no order as to costs.

12) In view of disposal of the main appeal, all other notices of motion taken on behalf of the applicants do not survive and are accordingly disposed of.

(A.R. JOSHI, J)

(V.M.KANADE,J)