

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.215 OF 2015
along with
CIVIL APPLICATION NO.275 OF 2015
in
APPEAL FROM ORDER NO.215 OF 2015**

Javed Ahmed s/oShamim Ahmed Shaikh & Ors. .. Appellants/Applicants
Vs.

Shamim Ahmed Shaikh .. Respondent

Mr.Sunil Kumar i/by M/s.Kumar & Associates for the appellants/
applicants.

Mr.Gauraj Shah a/w Ms.T.F. Sayed i/by Bharti Singh for the respondent.

CORAM : R.D. DHANUKA, J.

DATE : 15th February 2016

P.C.

. By this appeal from order, the appellants have impugned the order dated 27th January 2015 passed by the learned trial Judge thereby allowing the Notice of Motion No.2681 of 2014 filed by the respondent herein (original plaintiff) in terms of prayer clause (a) of the notice of motion thereby restraining the appellants, their servants, agents and/or any other person or persons claiming by, through or under the appellants from entering upon and/or remaining in the suit premises and/or from disturbing, interfering or obstructing the original plaintiff's peaceful use, occupation and possession in respect of the suit premises in any manner whatsoever.

2. The original plaintiff is the father of the appellant no.1. It is the case of the original plaintiff that the original plaintiff is exclusive

owner of the suit premises and has been staying in the suit premises with other family members. The original plaintiff has also filed First Information Report against the appellant no.1. The family of the original plaintiff consists of himself, his wife, defendant no.1, his four sons and a married daughter. It is the case of the plaintiff that the defendant no.1 has been residing at some other premises along with his family members. Before the learned trial Judge, the plaintiff produced several documents in support of his claim in respect of the suit premises which was acquired by the plaintiff alone and none of the other family members had right, title and interest whatsoever nature in respect of the said premises. In view of the objectionable behaviour of the appellant no.1 and his family members, the plaintiff filed a suit inter alia praying for injunction against the appellants.

3. It is the case of the plaintiff that the plaintiff had also taken a loan in respect of the said premises and has been paying regular monthly installment thereof.

4. Learned counsel appearing for the appellants, on the other hand, submits that the appellants had given various amounts from time to time to the respondent (original plaintiff) and thus they are entitled to occupy the suit flat. He submits that the respondent-father had misused those amounts provided by the appellants. On repeatedly calling upon the appellants to produce any document on record to show that they had any right, title and interest of whatsoever nature in the suit premises, learned counsel appearing for the appellants, however, has not produced any such document for perusal of this Court.

5. A perusal of the order passed by the learned trial Judge indicates that the learned trial Judge has considered the documents produced by the plaintiff and has also considered the submissions made by both the parties at great length. Learned trial Judge, prima facie, came to a conclusion that the appellants were not staying in the suit premises and had no prima facie right, title and interest of any nature whatsoever to enter the suit premises.

6. Since I am of the prima facie view that the original plaintiff has exclusive title in respect of the suit premises, the appellants cannot compel the father to permit them to stay in his flat. In my view, the impugned order passed by the learned trial Judge does not require interference by this Court. Appeal is devoid of merits and is accordingly dismissed. In view of dismissal of the appeal from order, civil application does not survive and is accordingly dismissed. No order as to costs.

7. Learned counsel appearing for the original plaintiff states that he has no objection if two bags of the appellant no.1 which are lying in the suit premises are removed by the appellants. It is made clear that if the appellants wish to remove such articles from the suit premises, the appellants shall remove the same within two weeks from today.

R.D. DHANUKA, J.