

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 25 OF 2016****IN****NOTICE OF MOTION NO. 2782 OF 2014****IN****B.C.C.C.SUIT NO. 2146 OF 2014****Vaishali Samir Parikh & Anr.****..... Appellants****VERSUS****Chandrakant Muljibhai Parikh & Anr.****..... Respondents**

Mr.U.L.Shah for the Appellants.

Mr.Vivek Kantawala, a/w. Mr.Amey Patil, Ms.Tanya Goveas, i/b. Vivek Kantawala & Associates for Respondent Nos.1 and 2.

CORAM : R.D. DHANUKA, J.**DATED : 8th FEBRUARY, 2016****P.C.**

By this appeal from order, the appellants (original defendants) have impugned the order dated 10th December, 2014 passed by the learned trial judge allowing the notice of motion filed by the plaintiffs and restraining the appellants or any person on their behalf by an order of temporary injunction from causing interference in use, occupation, possession and right of the plaintiff no.1 along with plaintiff no.2 in the suit property in any manner and mode during the pendency of the suit. The appellant no.1 is widow of Mr.Samir Parikh who was son of the plaintiffs. The appellant no.2 is the son of the appellant no.1 and was born out of the wedlock of the appellant no.1 with Mr.Samir Parikh.

2. It is the case of the respondents that the appellants after demise of their son Mr.Samir Parikh had admittedly vacated the suit premises and have been staying in

her rented house since 31st October, 2013.

3. The appellants had also filed a proceeding on 26th May, 2014 under the provisions of Maharashtra State Commission for Women inter alia praying for permission to enter the suit premises. The appellants have also filed a complaint under the provisions of Domestic Violence Act inter alia praying for an injunction against the original plaintiffs from restraining their entry in the suit premises. There is no dispute that initially the learned Judicial Magistrate, First Class had granted certain reliefs in favour of the appellants which reliefs are vacated by the Sessions Court. Till date, the appellants have not challenged the said order passed by the Sessions Court. The appellants have proposed to file the said order passed by the Sessions Court shortly.

4. Learned counsel appearing for the appellants invited my attention to the impugned order passed by the learned trial judge and would submit that the appellants who are staying in the suit property for more than 26 years cannot be refused entry in the matrimonial home of the appellant no.1 by the original plaintiffs. He submits that the appellants were required to shift to the alternate premises for the purpose of studies of the appellant no.2 at the relevant time. It is submitted that the appellants have been staying with a friend without payment of any compensation. It is submitted that the learned trial judge has not considered the affidavit in reply filed by the appellants in the impugned order.

5. Learned counsel appearing for the original plaintiffs on the other hand submits that the suit flat was admittedly purchased by the original plaintiff no.1. On the date of the acquisition of the suit flat, son of the plaintiffs who was husband of appellant no.1 was hardly 14 years old. My attention is invited to the share

certificate in respect of the suit property issued by Gold Coin Premises Co-operative Society Ltd. which indicates that on 30th January, 1978, the suit flat was transferred by the said society in the name of the original plaintiff no.1.

6. Insofar as share certificate relied upon by the appellants before the learned trial judge is concerned, it is submitted by the learned counsel for the plaintiffs that the plaintiffs do not admit the correctness of the allegation of the appellants that the name of Mr.Samir Parikh was added as associate member. In the alternate submission, it is submitted that even if the name of Mr.Samir Parikh was included as an associate member, upon his demise, the appellants were claiming through the said Mr.Samir Parikh cannot claim right, title or interest in the suit premises. It is submitted that the associate member did not have any claim in the suit property.

7. Learned counsel for the original plaintiffs submits that upon demise of Mr.Samir Parikh, the appellants have taken away several properties which were either standing in the joint name of the appellants with the deceased or which were in the individual name of the deceased husband of the appellant no.1. He submits that the appellant no.1 has voluntarily vacated the suit premises and has no right to stay in the suit premises which exclusively belongs to the plaintiff no.1.

8. Learned counsel for the appellants in rejoinder submits that the learned trial judge has not considered the affidavit in reply and has passed an order mechanically and thus this court shall remand the matter back to the learned trial judge for hearing afresh.

9. It is not in dispute that the suit flat was acquired by the plaintiff no.1 and her name was recorded in the share certificate by the society on 30th January, 1978.

Learned counsel appearing for the appellants could not dispute that the appellants have already left the said premises as far back as on 31st October, 2013 and have been staying somewhere else. The appellant no.2 has already passed his M.B.B.S. and is practicing as a doctor.

10. It is not in dispute that the application filed by the appellants under the provisions of Maharashtra State Commission for Women for the similar relief has not been pursued further. The Sessions Court has already set aside the relief which was granted in favour of the original appellants. As on today, there is no other order in favour of the appellants allowing the appellants to enter the suit premises.

11. In my prima facie view, even if the name of the husband of the appellant no.1 was added as an associate member in the share certificate in respect of the suit premises, the said inclusion would not create any right of any nature whatsoever in the ownership of the suit flat in favour of Mr.Samir Parikh.

12. The plaintiffs are about 73 years old. The appellants have been admittedly staying outside the premises for last more than two years. The learned trial judge has allowed the notice of motion filed by the original plaintiffs as far back as on 10th December, 2014. There is no interim relief granted by this court till today in favour of the appellants.

13. It is made clear that this court has not expressed any views on merits of the proceedings proposed to be filed by the appellants against the order passed by the Sessions Court under the provisions of Domestic Violence Act.

14. In my prima facie view the original plaintiff no.1 who is owner of the suit

flat is entitled to seek injunction against the appellants from entering upon the suit premises. The appellants have not made out any case for interference of the order passed by the learned trial judge. However it would be in the interest of justice, if the hearing of the suit is expedited.

15. The appellants have already filed written statement before the learned trial judge. The learned counsel for the parties have agreed that they would not seek any unnecessary adjournments before the learned trial judge and would proceed with the suit expeditiously.

16. Appeal is devoid of merits and is accordingly dismissed. It is made clear the observations made by the learned trial judge in the impugned order and in this order are prima facie. The learned trial judge shall dispose off the suit without being influenced by the observations made by the learned trial judge in the impugned order and by this court in this order. The learned trial judge shall make an endeavour to dispose off the suit within two years from the date of commencement of the oral evidence. No order as to costs.

[R.D. DHANUKA, J.]