

Amk

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

APPEAL FROM ORDER NO. 528 OF 2016

Mrs. Rahat Ayaz Thaver	.. Appellant
Vs.	
Mr. Nahat Essa Thaver	.. Respondent

Mr. Peter Coutinho for the Appellant.
Mr. A. A. Walawalkar for the Respondent.

CORAM : G. S. KULKARNI, J.
DATE : 14th DECEMBER, 2016.

P. C. :

1. Heard learned counsel for the appellant and learned counsel for the respondent. The appeal is directed against an order dated 08.02.2016 passed by the learned Judge, City Civil Court at Mumbai whereby the learned Judge has rejected the prayers for ad interim orders on a draft Notice of Motion as filed on behalf of the appellant/plaintiff in S. C. Suit No. 1363 of 2015.

2. A perusal of the impugned order shows that the flat in question belongs to the defendant and he was in occupation of the same. The claim of the appellant is that it is a matrimonial home. Admittedly, the appellant is not staying in the said flat. The appellant's husband and her son are stated to be in New Zealand and not staying in the suit flat.

3. The learned Trial Judge has observed that there was Release Deed which was executed in favour of the respondent/defendant in 2014

whereby all the other members of the family have relinquished their share, rights, title and interest in the suit flats without any consideration out of love and affection, in favour of the defendant. It is observed that the appellant/plaintiff has not filed a single document to show that she has legal right in the suit flats.

4. Prima facie, the appellant in the aforesaid situation can claim legal right only through her husband, if any. It is stated that the husband himself has relinquished his right in favour of the defendant and also not residing in the flat.

5. Thus, prima facie, I am of the opinion that the ad interim order passed by the learned Trial Judge does not require any interference. In any event, the Notice of Motion is pending, the appellant is at liberty to pursue the Notice of Motion. All the contentions of the parties on merits of the matter are expressly kept open.

6. Needless to observe that the learned Trial Judge shall decide the Notice of Motion without being influenced by the observations made in the ad interim order.

7. The Appeal from Order is dismissed, however, subject to the above observations.

[G. S. KULKARNI, J.]