

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

***APPEAL FROM ORDER NO. 568 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 711 OF 2015***

Hansa Premji Chawda,
R/at Room No.8(6),
Sai Cottage Welfare Society,
Karim Chawl, Gundavli Gaothan,
Azad Road, Andheri (E), Mumbai-69. ... Appellant

v/s

1. Neela Premji Chawda,
2. Dinesh Premji Chawda
3. Ashok Premji Chawda
(All three residing at)
Room No.8(6), Sai Cottage Welfare Society,
Karim Chawl, Gundavli Gaothan,
Azad Road, Andheri (E), Mumbai-69.

4 Usha Champak Gohil,
Room No.5, Golabar, Milan Subway,
Santacruz (E), Mumbai. ... Respondents

Mr.Omprakash Pandey for the appellant.

None present for the respondents.

CORAM: N.M. JAMDAR, J.

DATED : 8 MARCH 2016

ORAL ORDER:

Heard learned counsel for the Appellant.

2 The Appellant challenges the order passed by the City Civil Court, Dindoshi, dated 11 February 2015 dismissing the Notice of Motion taken out by the Appellant-Plaintiff.

3 The Appellant is the daughter of Respondent No.1. She had filed a Suit No.2736 of 2012 in respect of Room No.6(8) in Sai Cottage Welfare Society, Karim Chawl, Gundavli Gaothan, Azad Road, Andheri (E), Mumbai-400 069. It is her case that the father of the Appellant and husband of Respondent No.1 expired on 26 August 1979 and that the Appellant has equal right as an heir in the property having 1/5 undivided share. It was also her case that, she had an independent income and had financed the purchase of the flat. She contended that the property is going to be developed under S.R.A. Scheme and in view of the rights claimed by the Appellant prejudice would be caused if an injunction is not granted to the Appellant restraining Respondent No.1 from alienating and transferring the property.

4 Learned counsel for the Appellant has reiterated the case of the Appellant as advanced in the City Civil Court. The City Civil Court while rejecting the Notice of Motion, has taken into account an agreement of sale and sale deed of 18 February 1991. This sale deed shows that the property was purchased by Respondent No.1. Learned counsel for the Appellant made a grievance that copy of this document was not given to the Appellant and is not a part of the record. No such ground is taken in the appeal memo and the

submission made across the bar cannot be accepted. Therefore, the approach of the City Civil Court, in not finding *prima facie* case in favour of the Appellant cannot be faulted. The Court has also taken into account the fact that the documents show that Respondent No.1 provided some fund to the Appellant for purchase of the flat. Learned counsel for the Appellant asserted that, if the Respondents are not restrained from creating third party rights, the Appellant's claim in the suit will be prejudiced. Firstly, the Appellant has to show *prima facie* case which the Appellant has failed, and secondly, the City Civil Court has observed that, all the Respondents are residing in the suit premises and, therefore, the question of creating third party interest does not arise.

5 No fault can be found by the order passed by the City Civil Court and the discretion used cannot be stated to be perverse or illegal.

6 The appeal is dismissed.

7 The civil application is accordingly disposed of.

(N. M. JAMDAR, J.)