

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

**APPEAL FROM ORDER NO.712 OF 2015
ALONGWITH
CIVIL APPLICATION NO.867 OF 2015**

Mrs. Mona Lalit Tikiani

.. Appellant

Versus

Ashok Tahilram Nihalani

.. Respondent

Mr. Sanjiv Punalekar i/by PRS Legal for the Appellant.

Mr. Amol Parwatkar i/by Mr. S. D. Mogre for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 25th JULY 2016

PC.

1 The order dated 11.03.2015 passed by the Learned Judge of the City Civil Court, Greater Mumbai thereby dismissing the Notice of Motion No.2255 of 2013 filed by the Appellant/original Plaintiff. The Appellant and the Respondent herein are siblings being sister and brother. The suit in question has been filed questioning the Gift Deed allegedly executed by their father in favour of the Respondent gifting him the flat in question being Flat No.9-B, Anand Bhavan CHS, Bandra (W), Mumbai-400 050. The instant Notice of Motion was filed by the Plaintiff invoking Rule 2A of Order 39 of the CPC alleging breach of the order dated 23.12.2010 passed by a Learned Single Judge of this Court in Notice of Motion

No.3425 of 2010. By which order, the Respondent was directed not to create third party rights nor shall it be transferred in any manner. The cause for filing the said Notice of Motion was the factum of the Respondent executing a Leave and Licence agreement in respect of the flat in question for a period of twelve months for the monthly compensation and consideration mentioned in the said agreement dated 22.04.2013 which was renewed thereafter. The Trial Court having regard to the injunction granted in favour of the Plaintiff vide the said order dated 23.12.2010 and having regard to the fact that a Leave and Licence agreement has been executed by the Respondent recorded a finding that the execution of the said Leave and Licence agreement does not create any right in favour of the person in whose favour it is executed and therefore there is no breach of the said order dated 23.12.2010 and accordingly dismissed the Notice of Motion.

2 In my view, finding recorded by the Trial Court is unexceptional in view of the settled position that under a Leave and Licence agreement only licence is granted to occupy the premises which does not create any other right in favour of the person in whose favour the agreement is executed. Hence, no case for interference is made out with the impugned order. However, since there is an order which is already in operation i.e. order dated 23.12.2010 passed by this Court, whilst the suit

was pending in this Court, it would be just and proper if the Respondent herein is directed to seek leave of the Court prior to entering into a fresh agreement or renewing the existing agreement for a further period or for entering into any fresh agreement with any other person. If any such application is filed, needless to state that the Trial Court would consider the same appropriately and impose such conditions as it deems fit in the facts and circumstances of the case. Needless to state that the Plaintiff would be heard in respect of any such application that would be filed. With the aforesaid directions, the Appeal from Order is disposed of.

3 In view of the disposal of the Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]