

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**Appeal from Order NO. 641 OF 2014
with
Civil Application No.773 of 2014**

Mrs. Sangeeta Sabharwal	...Appellant
<i>Versus</i>	
1.Mrs.Rekha Sohanlal Sachdeva And Ors	...Respondents

Mr.Atul Damale i/b. Mr.J.P.Singh, for the Appellant.

Mr.R.V.Sipahimalani, for Respondent Nos.1 & 5.

CORAM: G. S. KULKARNI, J.

DATED: 21st April, 2016

PC:-

1. Heard Mr.Damle, learned Senior Counsel appearing for the Appellant and Mr.R.V.Sipahimalani, learned Counsel appearing for Respondent Nos.1 and 5. Respondent Nos.2, 3 and 4 are already deleted.

2. This appeal challenges the order dated 30 April 2014 passed by the learned Judge, City Civil Court, Mumbai, whereby Notice of Motion No.1766 of 2013 in Short Cause Suit No.2108 of 2013 filed by the Appellant/Plaintiff has been rejected.

3. The dispute pertains to a flat which according to the

Appellant/Plaintiff belonged to the deceased mother of the Plaintiff. After the death of the Appellant's/Plaintiff's mother, her father Sohanlal got married to Respondent No.1 in January,1991. On 12 June 2011 Sohanlal expired leaving behind the Appellant/Plaintiff, Respondent No.1 (wife) and Respondent Nos.2,3 and 4 – the real sisters of the Appellant/Plaintiff. Respondent No.5 is the daughter of Respondent No.1.

4. The case of the Appellant/Plaintiff is that she has a share in the suit flat and that Respondent No.1 -Stepmother is attempting to usurp the rights of the Appellant/Plaintiff and her other sisters. At this stage of the suit, there are certain documents which have come on record which show that Sohanlal had made certain nominations in respect of the suit flat. On behalf of Respondent Nos.1 and 5, it is contended on the basis of some documents that the Appellant/Plaintiff had relinquished her rights in respect of the suit flat. It is, therefore, apparent that there are rival contentions and assertions as urged before the Trial Court on the basis of these respective documents. These are the matters on the merits of the case which would be required to be decided by the Trial Court in the adjudication of the suit.

5. At the hearing of this Appeal today, learned Counsel for Respondent Nos.1 and 5 fairly states that his client does not intend to

create any third party rights and/or dispose of the suit flat. According to the learned Counsel for the Appellant, this would be the only concern of the Appellant/Plaintiff in this appeal that the suit flat be not disposed of during the pendency of the suit. Mr.Damale, learned Senior Counsel for the Appellant further has fairly conceded that his client would not have any objection if Respondent No.1 is permitted to let out the flat on leave and licence so as to permit Respondent No.1 to earn an income out of the same, considering her financial requirements and age of Respondent No.1. He submits that the Appellant therefore has no objection and is agreeable for letting out the premises on leave and licence or by keeping paying guests, but not creating of any tenancy. This suggestion is fairly acceptable to the learned Counsel for Respondent nos.1 and 5. If this be the position, no further adjudication of this Appeal from Order is necessary. The parties shall stand to this position till the disposal of the suit as pending before City Civil Court.

6. The appeal is disposed of in the above terms.

7. In view of the order passed in the Appeal from order, nothing survives in the Civil Application. The Civil Application is also accordingly disposed of. No order as to costs.

(G. S. KULKARNI,J.)