

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

**APPEAL FROM ORDER NO.771 OF 2015  
ALONGWITH  
CIVIL APPLICATION NO.939 OF 2015**

**Smt. Saroja Sadanand Shriyan**

**.. Appellant**

**Versus**

**Purushottam Shriram Tambe and others**

**.. Respondents**

**Mr. A. L. Gore for the Appellant.**

**Mr. N. S. Nevshe for the Respondent No.1.**

**CORAM : R.M. SAVANT, J.**

**DATE : 12<sup>th</sup> JULY 2016**

**PC.**

1           The order dated 15/16.04.2016 passed by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai is taken exception to by way of the above Appeal from Order. The Appellant is the original Defendant No.3 to the suit in question being SC Suit No.2498 of 2013. The Respondent herein is the original Plaintiff who has filed the suit in question being SC Suit No.2498 of 2013. The Defendant No.3 i.e. the Appellant herein is the mother of the Defendant No.1. The suit as filed was directed against all the Defendants and in the said suit, the Plaintiff had filed the instant Notice of Motion for a mandatory order and temporary injunction for restraining the Defendant Nos.1 and 3 from

entering into the suit premises. The instant Notice of Motion filed by the Plaintiff came to be partly allowed to the extent that the same was made absolute in terms of prayer clause (a) against the Defendant No.3, but was dismissed against the Defendant Nos.1 and 2. In so far as the non-grant of the relief sought by the Plaintiff against the Defendant Nos.1 and 2 are concerned, the reasons for the same are mentioned in the impugned order. The said reasons are revolving around the fact that there was a implicit consent granted by the Plaintiff for permitting the Defendant Nos.1 and 2 to reside in the suit premises. The Defendant No.1 is the ex-daughter-in-law of the Plaintiff and the Defendant No.2 is the grandson of the Plaintiff born out of the wedlock of the Defendant No.1 and the Plaintiff's son Avinash. Having regard to the reasons mentioned in the impugned order in so far as the rejection of the relief sought against the Defendant Nos.1 and 2 is concerned, this Court did not deem it appropriate to interfere with the order passed by the Trial Court in so far as the Defendant Nos.1 and 2 are concerned and accordingly dismissed the Appeal from Order No.1011 of 2015 filed by the Plaintiff.

2                However, in so far as the Defendant No.3 is concerned, the Notice of Motion has been made absolute in terms of prayer clause (a). The Trial Court whilst allowing the said Notice of Motion against the Defendant No.3 has recorded a finding that she has no right to stay in the

premises as also has no interest in the suit premises. As indicated above, the Defendant No.3 is the mother of the Defendant No.1 and has come to reside in the premises purportedly on the ground that she was looking after the Plaintiff and his wife who are more than 80 years of age and she also provides support to the Defendant Nos.1 and 2. The Defendant No.3 obviously cannot have any right in the premises which are belonging to the Plaintiff who is the ex-father-in-law of her daughter i.e. Defendant No.1. If that be so, the continuance of the Defendant No.3 can only be if the Plaintiff so desires and not otherwise. The Plaintiff has filed the suit in question as according to him nuisance is caused to him and his wife by the Defendant Nos.1 to 3.

3           In my view, having regard to the fact that the Defendant No.3 does not have any right to continue to reside in the suit premises, the order passed by the Trial Court making the Notice of Motion absolute in terms of prayer clause (a) against her cannot be faulted with. Hence, no case for interference is made out. The Appeal from Order is accordingly dismissed.

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

**[R.M. SAVANT, J]**