

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

**APPEAL FROM ORDER STAMP NO.15309 OF 2016
WITH
CIVIL APPLICATION STAMP NO.15310 OF 2016**

**Mohd. Kayyum Khan and ors. : Appellants/Applicants.
Versus
Khatun Nisha Widow of late
Kamruddin Khan : Respondent.**

**Mr. Suleman Saudagar i/by Mr. C Y Shah for the Appellants/Applicants.
Mr. M L Palan i/by Mr. V K Gupta for the Respondent.**

**CORAM : R. M. SAVANT, J.
DATE : 22nd June 2016**

P.C.

1 The order dated 20/04/2016 passed by the learned Ad-hoc Judge, City Civil Court, Greater Bombay is taken exception to by way of the above Appeal from Order. By the said order the Notice of Motion No. 4935 of 2015 (referred to as Notice of Motion No.812 of 2016 in the operative part of the impugned order) filed by the Respondent – original Plaintiff came to be made absolute in terms of prayer clauses (a), (b) and (d).

2 The effect of the grant of the said reliefs is that the Appellants herein are restrained from preventing the Plaintiff to enter into the premises and are enjoined from entering the premises. The suit premises is a flat

bearing No.303, A Wing, 3rd Floor, Tilak Nagar Amrut Co-operative Housing Society Ltd. Tilak Nagar, Chembur. The said premises are the outcome of a redevelopment scheme. The said premises were allotted to the Plaintiff on ownership basis. It seems that the Plaintiff was residing in the premises along with her younger son whereas the Defendant No.1 i.e. the Appellant No.1 herein was her elder son. It is the case of the Plaintiff that the Defendant No.1 was earlier residing at the native place and thereafter came to reside in the suit premises as he was searching for a job. It is the case of the Plaintiff that the Defendant No.1 thereafter called his wife and son also to stay along with him in the suit premises. It is the case of the Plaintiff that in the month of July 2015 she had been to Thane for medical check up. However, when she came back on 18/07/2015 she was prevented from entering the suit premises by the Defendant No.1 and that the Defendant No.1 also claimed exclusive ownership of the suit premises. This constrained the Plaintiff to file the suit in question. The Plaintiff has also filed Notice of Motion in the suit in question for the relief of temporary injunction restraining the Defendant No.1 from entering the suit premises and also restraining the Defendant No.1 from preventing the Plaintiff from entering the premises.

3 It was the case of the Defendant No.1 that though the Plaintiff was his mother he denied the sole ownership of the Plaintiff over the suit premises. It was his case that his father had given him the rights in the suit premises vide

affidavit dated 13/06/1995.

4 The Trial Court considered the said Notice of Motion being No.812 of 2016 and having regard to the facts of the case deemed it appropriate to make it absolute in terms of prayer clauses (a), (b) and (d) . The said prayer clauses of the Notice of Motion read thus :-

“(a) that pending the hearing and final disposal of the present suit, the Hon'ble Court be pleased to, by an Order and injunction of this Hon'ble Court, restrain the Defendants, their agents and persons claiming through under or by them from preventing the Plaintiff entering into the suit premises and remaining in the suit premises viz. Flat No.303, A-Wing, 3rd floor, Tilak Nagar, Amrut Co-operative Housing Society ltd, Building No.77, tilak Nagar, Chembur Mumbai 400 089 and/or the Defendants be restrained by an order and injunction of this Hon'ble Court from remaining in the suit premises and/or claiming any right over and upon the suit premises viz. Flat No.303, A-Wing, 3rd floor, Tilak Nagar, Amrut Co-operative Housing Society ltd, Building No.77, tilak Nagar, Chembur Mumbai 400 089;

(b) That pending the hearing and final disposal of the present suit, the Hon'ble Court be pleased to restrain the Defendants, their servants and agents and any other person or persons claiming through, under or by them be restrained by an Order and injunction of this Hon'ble Court from dealing with, parting with possession and/or inducting any third party into the suit premises and/or create any third party right in respect of the suit premises viz. Flat No.303, A-Wing, 3rd floor, Tilak Nagar, Amrut Co-operative Housing Society ltd, Building No.77, tilak Nagar, Chembur Mumbai 400 089 or any part/portion thereof.

(d) That pending the hearing and final disposal of the suit, the Defendants be restrained by an Order and injunction of this Hon'ble Court from disturbing the Plaintiff's right of occupancy and use of the suit premises, viz. Flat No.303, A-Wing, 3rd floor, Tilak Nagar, Amrut Co-operative Housing Society Ltd, Building No.77, tilak Nagar, Chembur Mumbai 400 089 and in particular the Defendants be restrained from using and/or occupying the suit premises except with the permission of the Plaintiff."

5 The gist of the reasoning of the Trial Court is that the documents placed on record by the Plaintiff go to show that the Plaintiff is the owner and also was in possession of the suit premises. The Trial Court on perusal of the documents produced by the Defendants observed that the Defendant No.1 was also residing in the suit premises at the time of filing of the suit. The Trial Court however on the basis that the Plaintiff is the owner of the suit premises and the Defendant No.1 is restraining her from entering into the suit property has deemed it appropriate to grant an injunction in terms of prayer clauses (a) (b) and (d).

6 The learned counsel appearing on behalf of the Appellant/Defendant No.1 that once the Trial Court came to a conclusion that the Defendant No.1 was residing in the suit premises at the time of filing the suit, the Trial Court had erred in granting injunction in terms of prayer clause (a) to the effect that the Defendant No.1 is restrained from entering into the suit premises.

7 In my view, it is not possible to accept the said contention urged on behalf of the Defendant No.1 in view of the fact that the Defendant No.1 was permitted to reside in the premises by the Plaintiff. It is required to be noted that at the prima facie stage, the Trial Court has come to a conclusion on the basis of the documents on record that it is the Plaintiff who is the owner of the premises, and admittedly the original premises were allotted to the husband of the Plaintiff and on redevelopment of the property, the premises came to be allotted to the Plaintiff by the Co-operative Society established on the redevelopment of the property. Since it is the Plaintiff's case that the Defendant No.1 has misused the permission granted to him and apprehends that the Defendant No.1 would prevent or obstruct the Plaintiff from entering into the premises, the injunction granted by the Trial Court by way of prayer clause (a) thereby restraining the Defendant No.1 from entering the premises, cannot be found fault with. Hence no case for interference is made out. The above Appeal from Order is accordingly dismissed. In view of the dismissal of the above Appeal from Order, Civil Application No.15310 of 2016 does not survive and the same to accordingly stand disposed of.

8 At this stage, the learned counsel appearing for the Appellants/Defendants Shri Suleman Saudagar prays for stay of the instant order. The said prayer is rejected as the learned counsel for the Respondent

Shri M L Palan assures this Court that till the ensuing Ramzan Eid, the Appellant/Defendant No.1 would be permitted to reside in the premises.

[R.M.SAVANT, J]