

JPP

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

CIVIL APPLICATION NO. 21 OF 2015

IN

SECOND APPEAL NO. 275 OF 2013

M/s. Gharonda Builders and Anr. ... Applicants/Appellants.

V/s.

Raghunath Nanji Patel

Since deceased through his legal heirs

Smt. Taramati Raghubhai Patel & Ors. ... Respondents.

Mr. K.K. Jadhav for the Applicants/Appellants.

Mr. Yogendra Rajgor for Respondents 1 to 8.

CORAM : N.M. Jamdar, J.

15 July, 2016.

P.C. :-

The Civil Application is taken out by the Appellant praying that the Respondent Nos.1 to 8 – Original Plaintiffs should vacate and hand over peaceful possession of the premises Flat No.301, Sanskar Towers, near Gurukul Society, Panchpakhadi, Thane and to direct the Respondent Nos.1 to 8 in particular Respondent No.5 to pay an amount of Rupees one lakh towards damages and also compensation.

2. The crux of the arguments of the learned Counsel for the Applicants is that after the Judgment and Order passed by the learned District Judge, it was stayed by this Court at the time of admission of the Appeal. The order passed by the learned Civil Judge is in operation which refers to an undertaking given by the Appellants. He submitted that in the undertaking it is made clear by the Applicants that the Respondents are entitled to only 300 sq. fit. and right now the Respondents are in occupation of almost 500 sq.ft.

3. The interim relief sought for of the above nature at this stage cannot be granted. The undertaking given by the Applicant refers to a Flat on the third floor bearing No. 301. The Respondents are in occupation of the said flat. Even if it is assumed that the Applicant has made an error in giving this undertaking, the Respondents cannot be faulted with as they are in possession of the flat mentioned in the undertaking. The undertaking was given to the planning authority to get the plan sanctioned and one does not know at this stage whether the alleged variance between the area and the flat, was deliberate or otherwise.

4. In the circumstances, relief prayed for in the present Civil Application cannot be granted. The Civil Application is accordingly rejected.

(N.M. Jamdar, J.)