

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1865 OF 2014
IN
FIRST APPEAL NO. 1934 OF 2008

Smt Damyanti A Modi & Anr	...Appellants
<i>Versus</i>	
Dhiren Modi	...Respondent

Mr Dharmesh Joshi, *a/w Mr Parag Joshi, for the Applicant in CA/1865/14.*

Mr SS Murthy, *a/w Mr Murlidharan, i/b M/s Joy Legal Consultants, for the Appellants.*

CORAM: G.S. PATEL, J
DATED: 8th June 2017

PC:-

1. This is an application by the original 1st Respondent (original Defendant to the Suit). The Appeal has been admitted from an order dismissing the Plaintiff's Suit for an injunction. The Plaintiff claimed to be a joint owner of Flat No. B-404, 4th Floor, Jyoti Tower, SV Road, Kandivli (West), Mumbai 400 067. The Plaintiffs claim to have paid Rs. 1 Lakh towards repayment of a loan that he alleged was taken by the 1st Defendant (present Applicant), his stepmother. The Trial Court dismissed the Suit on 25th August

2008. The First Appeal was admitted thereafter. There is no interim relief on either side.

2. The present Application is brought under Section 52 of the Transfer of Property Act by the original 1st Defendant seeking leave to sell the flat. She agrees to deposit 50% of the sale consideration in Court.

3. Mr Murthy for the Appellant (Original Plaintiff) states that as a co-owner of the flat, it is not his desire that the flat be sold. Neither of the parties is in occupation of the flat which is given out to third parties on Leave and License basis. It is the licensees who have offered to purchase flat. The license fee is being collected by the Applicants. Mr Murthy has no grievance about this and he has not filed any application in regard to the Leave and License or the license fees being received.

4. I believe that Mr Murthy is correct in saying that to allow a sale of the flat would irrecoverably alter the entire conspectus of the matter. It is not only a question of whether the Appellant is entitled to the sale proceeds or to a part of the sale proceeds, but there is a question as to whether he would be entitled to the profit from it, or to possession of it or any part of it. Allowing to the application such as this, at this stage, would be inappropriate. The better course of action, in my view, would be to take up the Appeal itself at an early date for hearing and final disposal as the Appeal is of 2008.

5. By an order dated 19th April 2013 KK Tated J directed the parties to file private a paper book within four weeks. If not already filed, that private paperbook must now be filed on or before 23rd June 2017.

6. List the First Appeal high on the weekly board, subject to over-night part heard.

7. The present Civil Application is dismissed. There will be no order as to costs.

(G. S. PATEL, J.)