

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 591 OF 2016
WITH
CIVIL APPLICATION NO. 761 OF 2016

Shrikar Bhadrayya Puthran	...Appellant
<i>Versus</i>	
Bharati Bhadrayya Puthram & Ors	...Respondents

Ms Neha D Nagotaneekar, *for the Appellant.*
Mr RC Pandey, *for Respondents Nos. 1 to 4.*

CORAM: G.S. PATEL, J
DATED: 17th July 2017

PC:-

1. The Plaintiff is in Appeal. He is aggrieved by an order dated 9th May 2016 declining interim relief. The Plaintiff is the brother of Defendants Nos. 2 and 3. Defendant No. 1 is his mother, 91 years old at the time when the Suit was filed. Defendant No. 2 is his brother. Defendant No. 3 is his sister and Defendant No. 4 is Plaintiff's nephew, his father's sister's son.

2. The Suit seeks a declaration that the Plaintiff has two-fifth share in residential flat No. 30 in Jeevan Sarita CHS Ltd, Tejpal Schele No. 1, Vile Parle. This was initially in the name of the father

of the Plaintiff and Defendant Nos. 2 and 3 and the late husband of Defendant No. 1, one Bhadrayya Puthran. At some point, the Plaintiff claimed to have contributed in purchase of this flat but that submission was short lived. Bhadrayya died on 23rd January 1993. The Plaintiff stayed on in Flat No. 30. The 2nd Defendant, his brother, shifted to another flat at Andheri (West). His sister moved to her matrimonial home. The Plaintiff's mother, Defendant No. 1, too stayed on in the flat. The entire building was taken up for redevelopment in 2012. It is at this stage that the Plaintiff came to Court and sought a relief including preventing society/developer from delivering possession of the corresponding flat in the new building to any of the Defendants.

3. The Defendants entered appearance, once they were served and even filed Written Statements. They seem not to have appeared before the Court. A peculiarity here is that the society was not joined initially as a party defendant to the Suit. The Plaintiff filed Chamber Summons No. 783 of 2015 to implead the society as a defendant or respondent to it and sought reliefs. The society contested the proceedings. The Trial Court found that there was a considerable delay of about 30 months in asking for interim reliefs. There was no urgency. The Trial Court found no case made out for the grant of ad-interim relief.

4. The Notice of Motion is yet pending. The Chamber Summons has been allowed. Service completion is awaited after the amendment was effected. In the meantime, the Plaintiff filed Notice of Motion No. 1066 of 2016 in which the impugned order refusing the relief was passed.

5. The impugned order calls for no interference. The Notice of Motion will be heard on its own merits uninfluenced by the ad-interim order. All contentions are left open.
6. The Appeal is dismissed. No costs.
7. The Civil Application does not survive and disposed of as infructuous.

(G. S. PATEL, J)