

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

**APPEAL FROM ORDER (ST.) NO. 24916 OF 2017
WITH
CIVIL APPLICATION (ST.) NO. 24917 OF 2017
IN
APPEAL FROM ORDER (ST.) NO. 24916 OF 2017**

Devanand Nilkanth Acharekar & Anr. ...Appellants

Versus

Mahendra Nilkanth Acharekar ...Respondent

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Ms. Deepa Mani a/w. Ms.Akshata Naik i/b. D.M. Legal Ventures for
the Appellants.

Mr. Rajesh Devgharkar a/w. Mr.Rajas Naik for the Respondent.

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CORAM: MRS.MRIDULA BHATKAR, J.

DATED: OCTOBER 30, 2017

P.C. :

1. This Appeal is directed against the order dated 04.08.2017 passed by the learned Judge, City Civil Court, Gr. Bombay, thereby dismissing Notice of Motion No. 3955 of 2016 in S.C.Suit No. 2440 of 2016.

2. The appellants, who are the original plaintiffs, have filed a Suit for injunction against the respondent/defendant with a prayer that the respondent/defendant should not create any third party right in the suit premises. The suit premises is a tenanted premises of the father of the appellants and the respondent. The appellants are the two brothers of the respondent. Their father expired on 07.06.1998. Thereafter, the mother and the respondent/defendant continued to stay in the suit premises. Initially, the appellants/plaintiffs were staying in the suit premises. Since 1990, the appellants/plaintiffs are residing in a different premises alongwith their respective family members. In March 1999, the rent receipt was transferred in the name of the respondent/defendant. The appellants/plaintiffs filed the Suit under apprehension that the respondent/defendant is likely to dispose of the suit property and he is likely to transfer the suit property in the name of some other person. The trial Court has dismissed the Notice of Motion mainly on the ground that the plaintiffs have already transferred the rent receipt in the name of the defendant in the year 1999 and after such a long time, the plaintiffs have filed the Suit in respect of the suit premises.

3. After going through the impugned order and considering the facts before the Court, as the Suit is filed between the brothers, they are asked to settle the matter, if possible.

4. Learned counsel for the appellants has submitted that the appellants are more concerned about emotional issue of their mother and the respondent should not dishouse her at the late hours of her life. She is staying in the suit premises since her marriage and if at all the suit premises is sold or transferred to any other person, then it would be emotional shock to the mother. She has further submitted that the appellants want to go and meet their mother in the suit premises, as they are also born and brought up in the suit premises.

5. Per contra, the learned counsel for the respondent has submitted that the respondent does not want to transfer the suit premises to anybody and does not want to create interest of any nature in favour of any third party, but he will continue to stay with his mother and his family in the suit premises hereafter. He

has further submitted that the respondent has no objection if the appellants i.e. his two brothers and their family members come and meet their mother.

6. On hearing these submissions, the respondent is directed to file an affidavit-cum-undertaking to that effect. The affidavit-cum-undertaking dated 30.10.2017 is filed by the respondent. The said affidavit-cum-undertaking is taken on record and marked as **Exhibit-1** for identification.

7. Considering these submissions and on acceptance of the statements made in the affidavit-cum-undertaking, nothing survives in the Appeal from Order and it is disposed of. The trial Court after considering these facts may dispose of the Suit also.

8. In view of the disposal of the Appeal, nothing survives in the Civil Application and the same is disposed of as such.

(MRIDULA BHATKAR, J.)