

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (St.) No. 33445 OF 2017  
WITH  
CIVIL APPLICATION (St.) No. 33446 OF 2017**

Shagufta Obaidullah Dalvi ... Appellant/Applicant  
Vs.  
Shakuntala Rodrigues & Ors. ... Respondents

Mr. J.S. Kini i/b. Mr. Suresh Dubey, Advocate for the  
appellant/applicant.  
Mr. D.R. Shetty, Court Receiver present.

**CORAM: MRS.MRIDULA BHATKAR, J.**  
**DATE: 30<sup>th</sup> November, 2017.**

**P.C.:**

Today the respondent No. 1/original plaintiff appeared through her lawyer. The learned counsel for respondent No. 1 informs the Court that respondent No. 1/original plaintiff is a bonafide purchaser of the flat, who has paid an amount of Rs.82,00,000/- by way of consideration of the flat in the year 2015 and since then, she is waiting for the possession of the suit flat where the appellant, who is wife of defendant No. 2, is residing without any right. The learned counsel submitted that the appellant is fully aware of this transaction. In fact, at the time of this transaction, the appellant was present. Defendant No. 2 is in Dubai and the transaction has taken place with defendant No. 1/father-in-law of the appellant. The learned counsel submitted that the respondent No. 1/original plaintiff can produce all

the documentary evidence of the payment of consideration amount to defendant nos. 1 and 2.

2. The learned counsel Mr. Kini appearing for the appellant submitted that the counsel who is today appearing for respondent No. 1/original plaintiff has appeared earlier in the Magistrate Court in the proceedings under Domestic Violence Act for defendant No. 2/husband, therefore, the suit is collusive and the transaction is malafide.

3. The learned counsel for respondent No. 1/plaintiff refutes of the allegations and puts the learned counsel for the appellant to the strict proof of the facts.

4. Be that as it may, as on today, the appellant/wife of defendant No. 2 is occupying the suit flat along with her 8 to 9 years old daughter. The appellant wants to file an application for intervention in the suit before the trial Court to prove the transaction between the respondent no.1/plaintiff and defendant nos. 1 and 2 is malafide. Under such circumstances, considering the plight of the appellant and her daughter, I am inclined to protect them for sometime. The parties to appear before the trial Court on 11<sup>th</sup> December, 2017. Till

then, the Court Receiver to stay off his hands from taking the possession and the order of the trial Court of directing the Court Receiver to take the forcible possession of the suit flat is hereby stayed. The trial Court may consider the alternate option of giving direction to Court Receiver of taking symbolic possession and to proceed with the trial. If the Application for Intervention is filed by the appellant, that can be considered within four weeks and thereafter the trial Court to expedite the matter and conclude the same on or before 30<sup>th</sup> April, 2018. Parties to cooperate the trial Court and the trial Court to decide the matter especially as per the law under the Transfer of Property Act.

5. Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

**(MRIDULA BHATKAR, J.)**