

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

**APPEAL FROM ORDER (STAMP) NO.8630 OF 2018
WITH
CIVIL APPLICATION (STAMP) NO.8631 OF 2018**

Ashfiya Khatoon Israr Ahmed Malik

..Appellant

vs.

Mushtaque Maqbool Malik and Anr.

...Respondents

Mr.Omkar kulkarni i/b Mr. Hassan Ullah Khan for the Appellant.
Mr. S. C. Singh for the Respondent Nos. 1 and 2.

CORAM : V. M. DESHPANDE, J.

DATE : 19th JULY, 2018

P.C.:

. Heard learned counsel for the appellant. The present appeal takes exception to the order passed by the learned Judge City Civil Court, Greater Bombay dated 1/3/2018. By the impugned order the Court below has dismissed the Notice of Motion No.601/2018 in S.C. Suit No.431/2018 and refused to grant injunction in favour of the appellant.

2. The case of the appellant is that originally the suit premises was owned by the father-in-law of the appellant. Her case is that in order to purchase the suit property, her husband has contributed the amount. According the appellant/plaintiff's case on 9/2/2010 a Sale Deed was executed in her favour by her father-in-law for consideration of Rs.6 Lakhs and since then she has become absolute owner of the property. It is her further case that the defendants who are her brother-in-law are interfering with her peaceful enjoyment of the suit property.

3. The Court below issued notice to the defendants to appear in the matter and to file their detailed reply to the application for temporary injunction. Each and every averment made in the injunction application was denied by the defendants. Not only that it was very specific case that the sale deed on the basis of which appellant is claiming ownership is a bogus and fabricated document and therefore injunction should not be granted. After hearing the parties to the injunction application, the Court below has passed order rejecting injunction application. Hence this appeal. As it can be seen from the pleadings and submissions before me that the appellant/plaintiff asserts her right as owner on the basis of sale deed dated 9/2/2010 purportedly executed in her favour by her father-in-law who is now no more. When question was put to learned counsel for the appellant that as to whether the sale deed is registered document or not, candid answer that the learned counsel for the appellant gave to this Court is that the sale deed is not a registered document.

4. In view of provisions of section 17 of the Registration Act, sale deed is a compulsorily registrable document and unless it is registered it cannot be admitted in evidence. Since the appellant claims title on the basis of the said sale deed, unless and until the sale deed is registered, in my view the appellant cannot exclude the other legal representatives of her deceased father-in-law who are admitted owners of the suit premises. The said sale deed cannot be considered at this stage since at the most it can be used as a collateral evidence during the course of trial.

5. It is submission of the learned counsel for the appellant that appellant's husband has contributed fund and on such contribution the father-in-law of the appellant has purchased the suit property. It is question of fact which will have to be determined after detailed evidence especially when there is no documentary evidence to show prima facie about the

contribution of the funds to the father-in-law.

6. After the death of father-in-law all the legal representatives of the father-in-law of the appellant would become joint owner of the property. The law of injunction as well crystallize that a co-owner cannot claim injunction against another co-owner and therefore the learned Judge of the Court below has rightly not granted injunction. Hence, appeal is rejected. Civil application is disposed of.

(V. M. DESHPANDE, J)