

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.337 OF 2018
ALONG WITH
CIVIL APPLICATION NO.443 OF 2018

Neeta Bhagwan Lokhakare	 Appellant-Applicant
V/s.	
Saraswati Nivrutti Karpe and Ors.	 Respondents

Mr. S.K. Keswani for the Appellant-Applicant.

Mr. Rishabh Shah, a/w. Ms. Anuja Bhansali, I/by M/s. Raval Shah & Co.,
for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 4TH OCTOBER, 2018.

P.C. :

1. Heard learned counsel for the respective parties.
2. This Appeal takes an exception to the order dated 3rd April 2018 passed by the City Civil Court, Mumbai, thereby dismissing with costs the Notice of Motion No.434 of 2018 filed in S.C. Suit No.68 of 2018.
3. The said Notice of Motion was taken out by the Appellant herein, restraining the Respondents from dispossessing her from the suit premises without following the due process of law.
4. Appellant is the sister of Respondent Nos.1 to 3. It is her contention that, the suit premises were initially let out to her mother. The 'Rent Receipt' of the suit premises is standing in the name of her

mother. Her mother shifted to Pune in the year 2005 and died there in the year 2006. It is her further contention that, Respondent No.2, in the year 2010, has made an application to delete the name of her mother from the suit premises and thereafter, had entered into an 'Agreement' with the landlord for re-development of the suit property. After re-development of the suit property, Appellant has started residing in the suit premises with her family. However, as the Respondents are trying to evict her without following the due process of law, her possession in the suit premises be protected.

5. This Notice of Motion came to be resisted by the Respondents, contending, *inter alia*, that, the Appellant was never in possession of the suit premises as legal heir of their mother-the tenant. Conversely, on the request of the Appellant, her son was allowed to reside in the suit premises, as he was married and Appellant had given one of her two houses on rent. It was submitted that, when Respondents demanded possession of the suit premises, she requested that she may be continued in possession of the suit premises; however, her possession therein is not at all lawful; she has no title thereto and hence, her possession cannot be protected.

6. The Trial Court was, after considering the facts on record, pleased to hold that, the Appellant has not come before the Court with clean hands or with a *prima facie* case. She has not disclosed the material

facts. She has also not sought the relief of declaration of her title to the suit premises and hence, her Notice of Motion cannot be allowed.

7. While challenging this order of the Trial Court, the submission of learned counsel for the Appellant is that, in affidavit-in-reply, the Respondents have admitted that the Appellant is in possession of the suit premises. In view thereof, it is submitted that, it was not necessary for the Appellant to seek any relief of declaration relating to the title over the suit premises. Therefore, the finding recorded by the Trial Court to that effect is not correct. Secondly, it is submitted that, when the title of the person in possession is not in dispute or under doubt, then no relief of declaration is necessary.

8. Relying upon the Judgment of the Hon'ble Apex Court in the case of *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) By LRs and Others*, (2008) 4 SCC 594, it is urged that, the only relief the Appellant is seeking is of dispossession without following the due process of law and hence, the Trial Court should have granted the same.

9. However, as rightly submitted by learned counsel for the Respondents and as held by the Trial Court, the Appellant has not come before the Court with clean hands or with a prima facie case at all. She has not even stated since when she is in possession of the suit premises and whether at the time of death of her mother, she was in possession as the legal heir of mother.

10. Under Section 5(11)(c) of the Maharashtra Rent Control Act, 1999, the 'legal heir' can claim to be having a right to remain in possession of the tenanted premises only if, at the time of death of the tenant, he was in possession thereof. Here in the case, the Appellant was already married, having her own two homes nearby. Only on her request, for a temporary period, she was allowed to be in possession of the suit premises and on the basis of the same, she cannot usurp the suit premises; especially when, as observed by the Trial Court, there is absolutely no evidence to show that, at any time, Respondents had taken any resort to unlawful means to dispossess the Appellant from the suit premises.

11. In such situation, in the view taken by the Trial Court, which is the possible view of the matter, from the facts on record, this Court should restrain itself from interfering therein. The Appeal, therefore, holds no merits; hence, stands dismissed.

12. In view of the dismissal of the Appeal, Civil Application No.443 of 2018 pending therein does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]