

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO.223 OF 2018
IN
NOTICE OF MOTION NO. 38 OF 2018**

Ms.Piedade Joao Pereira V/s. Mrs.Sukrina Mascarenhas and anr....	...	Appellant/Petitioner Caveatrixes /Respondents
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Ms Kashmira Bharucha with Ms Sonali Lolage i/by Mr.Rajiv Jadhav for the Appellant.
Mr.V.E.Pereira for the Respondents.

**CORAM : A.S.OKA & M.S.SONAK, JJ.
DATE : AUGUST 21, 2018.**

P.C. :

1. The present appellant is the petitioner in a petition for grant Letters of Administration filed by her in respect of the properties of her deceased father. The deceased father was survived by four daughters and three sons. It is pointed out that one of the three sons is no more. In the petition for Letters of Administration filed by the petitioner, two sisters of the petitioner (first two respondents herein) filed a caveat. A Notice of Motion was taken out by the petitioner in the pending petition for

Letters of Administration. The prayer in the Notice of Motion was to dismiss the caveat filed by the said respondents. The other prayer was to direct the second respondent to allow the appellant to enter the subject flat till the disposal of the petition of the Letters of the Administration. By the impugned order dated 21st March 2018, the Notice of Motion has been dismissed.

2. The submission of the learned counsel appearing for the appellant is that she was always residing in the said flat. She pointed out that the appellant had to go abroad for the purpose of employment and when she came back, it was found that the second respondent had grabbed the subject flat and the appellant was denied entry. Her submission is that the second respondent is claiming on the basis of an alleged nomination made by the deceased father and in any event, the nomination will not defeat the rightful claim of the petitioner as one of the heirs of her deceased father. Her submission is that the appellant is required to live at the mercy of others. Her submission is that an order may be passed permitting the appellant to reside in the subject flat. In the alternative, she submits that a Court Receiver of the subject flat may be appointed.

3. We have considered the submissions. From impugned order, we find that the learned Single Judge has restrained the respondents from disposing of and from parting with the possession of the subject flat. We have perused the affidavit-in-support of the caveat and the affidavit-in-support of the Notice of Motion taken out by the appellant. According to the case made out by the appellant, from the year 1992, she was doing a job on contract in Dubai and she used to frequently come back to Mumbai and stay in the subject flat. She has stated that on 21st October 2015, when she came back to Mumbai after expiry of her contract, she found that the keys of the subject flat were not available with the neighbours and that the second respondent had left for Dubai. The allegation is that when the second respondent came back after three months, the petitioner was denied entry by her in to the subject flat. The Appellant has relied upon the police complaint filed by her on 30th August 2016. It appears that according to the case of the second respondent, the appellant and her one brother and sister tried to forcibly enter the flat on 7th September 2016, and they threw stones at the door and broke the door bell. The Second respondent had lodged

a first information report with the police about this incident.

4. Going by the statements made in the affidavit-in-support, from the year 1992 till 21st October 2015, the appellant was abroad and was employed there.

5. Obviously, the petitioner and the second respondent have a long standing dispute. The second respondent is admittedly in occupation of the subject flat. Considering all these aspects, the learned Single Judge denied the drastic interim relief of permitting the petitioner to enter the subject flat wherein the second respondent is residing. We find no error in the exercise of discretion by the learned Single Judge, when he declined to grant the prayer of the appellant to allow her to reside in the subject flat. The learned Judge also considered the delay as a factor while considering the prayer for grant of an equitable relief. Moreover, the learned Single Judge has protected the appellant to an extent by granting injunction restraining the respondents from parting with the possession of the subject flat and from creating third party interests therein.

6. It is not possible to find fault with the discretionary order of the learned Single Judge, especially in the light of the fact that

the subject flat will be protected till the disposal of the main petition. In the Notice of Motion on which impugned order has been passed, there was no prayer made for appointing a Court Receiver and therefore, it is for the appellant to apply for appointment of Court Receiver in accordance with law. Subject to what is observed above, the appeal is dismissed.

(M.S.SONAK, J.)

(A.S.OKA, J.)

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Priya
Rajesh
Soparkar

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by Priya Rajesh
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