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

APPEAL NO.335 OF 2018
IN
NOTICE OF MOTION (L) NO.1583 OF 2018
IN
SUIT NO.1867 OF 2011

Kaminiben Pravin Kumar Patel and others ..Appellants
Versus

1. Bhupendra Dahyabhai Patel
(Deleted since deceased)
1(a) Mrs. Jankhana Nilesh Patel
and others

..Respondents

WITH
NOTICE OF MOTION NO.793 OF 2018
IN
APPEAL NO.335 OF 2018
IN
NOTICE OF MOTION (L) NO.1583 OF 2018
IN
SUIT NO.1867 OF 2011

Kaminiben Pravin Kumar and others ..Applicants

IN THE MATTER BETWEEN

Kaminiben Pravin Kumar Patel and others ..Appellants
Versus

Bhupendra Dahyabhai Patel
(Deleted since deceased)

Mrs. Jankhana Nilesh Patel and others ..Respondents

Mr. Navin Parekh a/w Ms. Hetal Patel, Advocate for the
Appellants/Applicants.

Mr. Sharan Jagtiani a/w Mr. Shilpan Gaonkar & Mr. Suraj Iyer I/by

M/s. Ganesh and Company, Advocate for Respondents.

**CORAM: B. R. GAVAI &
RIYAZ I. CHAGLA, JJ.**

DATE: 22nd NOVEMBER, 2018

P.C.:-

1] By way of present Appeal, the Appellants challenge the order dated 19/7/2018 passed in Notice of Motion Lodging No.1583 of 2018 in Suit No.1867 of 2011.

2] By the said order, the learned Single Judge has rejected the prayer made by the present Appellants for injuncting the Defendants from dealing with the suit property.

3] Mr. Parekh, learned Counsel appearing on behalf of the Appellants, submits that though by decree dated 24/10/1991 in a City Civil Court Short Cause Suit No.822 of 1991, which decree is confirmed in the First Appeal, original owners are restrained from transferring tenancies, creating third party rights etc., the Defendants have changed the ownership of the property and in the rent receipts,

the names of Nilesh M. Patel son-in-law and Jankhana N. Patel, daughter of original landlords appear. He therefore submits that, it is clear that the original owners have acted in breach of the order of injunction confirmed by this Court.

4] Admittedly, with respect to the same property, a Suit being City Civil Court Suit No.2050 of 2003 is filed by a partnership firm or the original Defendant No.1 in the present suit. The suit filed is of the year 2003 whereas, the present suit is filed in the year 2011. As such, it could be seen that, admittedly, the suit filed in the City Civil Court is prior in point of time. The learned Single Judge has observed that the prayer for injunction, which is sought to be made in the present Suit, can very well be made in the Suit pending before the learned City Civil Court. The learned Single Judge has also kept all the contentions open to be raised before the City Civil Court in the eventuality of such Notice of Motion is filed before the learned City Civil Court.

5] In that view of the matter, we do not find that any interference

is warranted in the present Appeal. Appeal is rejected, reserving the liberty granted to the Appellant by the learned Single Judge.

6] Since Appeal itself is rejected and disposed of, nothing survives in the Notice of Motion taken out therein and the same is also disposed of.

(RIYAZ I.CHAGLA J.)

(B. R. GAVAI, J.)