

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

**APPEAL FROM ORDER NO.358 OF 2019
WITH
CIVIL APPLICATION NO.425 OF 2019
WITH
CIVIL APPLICATION (ST.) NO.18259 OF 2019**

Mohini Brahmanand Gupta ... Appellant
Versus
Krishna Brahmanand Gupta & ors. ... Respondents

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Mrs. Babita P. Pandey for appellant.
Mr. Jitendra Shukla & J.P. Mishra for respondent Nos.1 & 2.

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CORAM : M. S. KARNIK, J.

DATE : 17th JULY, 2019.

P. C.:

1. Heard learned counsel for the appellant.
2. The order under challenge is dated 20.12.2018 passed by the Judge, City Civil Court, Mumbai rejecting the Notice of Motion taken out by the appellant for temporarily restraining the respondent No.1 from selling or disposing of in any other manner the suit premises bearing room No.208 described in detail in the plaint, pending final disposal of suit. Relief is also claimed to restrain defendant No.3 from removing the name of plaintiff from electric meter installed at the suit premises.

3. It is the contention of the appellant that the suit premises is a self acquired property of the appellant. My attention is invited to the declaration of the original owner of the property.

4. The Notice of Motion was filed for following reliefs :-

“a) That during pendency of the above mentioned suit this Hon'ble Court be pleased to pass an order and injunction against the Defendant No.1 restraining them, their agent, servant and any other persons claiming through them from the sale and/disposal of the suit premises i.e. Room No.208, B.P.T. Railway line, Gate No.4, Wadala, Mumbai 400 037.

b) That during pendency of the above mentioned suit, this Hon'ble Court be pleased to pass an order and injunction against the Defendant No.3 restraining them, their agent, servant and any other persons claiming through them to maintain Plaintiff's name/not to remove Plaintiff's name on Electric Meter No.A 059866 i.e. by the BEST authority at the aforesaid address of Plaintiff till the disposal of the above mentioned suit and also stay of the hearing or taking any further action upon the Applications filed by the Defendant No.1 & 2 before the Defendant No.3 till the disposal of the Suit.

c) That pending the hearing and final disposal of the suit the Defendants, their servants, agents and any other

persons, claiming through them be restrained by an order of permanent injunction from not to transfer, sale and /or create any third party in the suit premises i.e. Room No.208, B.P.T. Railway line, Gate No.4, Wadala, Mumbai 400 037.”

5. It is now pointed out that in so far as the electric meter is concerned, the same is already transferred in the name of the defendant. My attention is also invited to the statement made by the original defendant Nos.1 and 2 that the defendants are not interested in creating third party interest in the suit premises.

6. In this view of the matter, I see no reason to interfere with the order passed by the Trial Court. Needless to mention the defendant No.2 and even during the course of hearing of this Appeal, learned counsel for respondent Nos.1 and 2 on instructions states that they will not create any third party interest and/or transfer of the suit premises during the pendency of the suit before the Trial Court. In any case if the electric meter is transferred in the name of the defendant during the pendency of the suit, such a transfer will be governed by the final outcome of

the suit. It is made clear that merely because the electric meter is transferred in name of the defendant during the pendency of the suit will not by itself entitle defendant Nos.1 and 2 to claim ownership rights in the suit property.

7. The Appeal is disposed of.

8. All contentions are kept open.

9. In view of the disposal of the Appeal, nothing survive for consideration in the Civil Applications. The Civil Applications are disposed of accordingly.

(M. S. KARNIK, J.)