

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

CIVIL APPLICATION NO. 1071 OF 2017
IN
FIRST APPEAL NO. 919 OF 2016

WITH

CIVIL APPLICATION NO. 203 OF 2022
IN
FIRST APPEAL NO. 919 OF 2016

Mahendra Baburam Gupta ..Applicant

v/s.

Baburam Dablaram Gupta & Anr. ..Respondents

Mr. Girish Paryani for the Applicant .
Mr. Vivek Gupta for the Respondent No.1.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 13th SEPTEMBER, 2022.**

P.C.

1. By this application, the Applicant herein has sought stay of execution and implementation of the impugned judgment and decree dated 15.02.2016 in S.C.Suit No. 1792 of 2008.

2. By the impugned judgment the trial Court decreed the suit and has thereby directed the Appellants to vacate the premises being Shop No.10 admeasuring 12' x 8' consisting of ground plus upper floor of Hanuman Gayadin Chawl, Near Ajit Glass, S.V.Road, Jogeshwarti (West), Mumbai.

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3. The Appellant herein claims exclusive rights to the suit shop, whereas the case of the Respondents is that late Baburam Dabbalram Gupta (Original Plaintiff), the husband of Respondent No.1(a) and the father of the Appellant and the other Respondents was the tenant in respect of the said premises. It is stated that the Respondents have equal right in the suit shop.

4. It is not in dispute that Ghirauram Gupta, brother of the Plaintiff-Baburam was the tenant in respect of the said premises. Said Ghirauram expired in the year 1992 and the Plaintiff continued to reside in the said premises on payment of rent. The landlord has issued the rent receipts in the name of the Plaintiff Baburam and has accepted Baburam as the tenant. The trial Court has recorded a finding that the appellant has transferred the documents in his name on the basis of the forged affidavit.

5. The records prima facie indicate that the Appellant had obtained possession of the suit shop on the basis of a forged affidavit. Learned Counsel for the Appellant states that the Appellant has deposited amount of Rs.10 lakhs before this Court in the month of April 2017, and that the same has been invested. He further makes a statement, under instructions, that the Appellant shall deposit before this Court a sum of Rs.20,000/- per month. Learned Counsel for the Appellant and Respondents concede that the amount of Rs.20,000/- as well as quarterly interest on the amount of Rs.10 lakhs shall be paid to Respondent

No.1(a) Sampati Baburam Gupta, mother of the Appellant and Respondent Nos 1(b), 1(c) and 1(d).

6. In the light of the said statement, execution and implementation of the impugned judgment and decree is stayed pending hearing of the appeal, subject to the Appellant depositing Rs.20,000/- per month. The Appellant is put to notice that the interim relief shall stand vacated without further reference to the Court, on failure to comply with the conditional order.

7. The Respondent No.1(a) is permitted to withdraw the amount of Rs.20,000/- and the quarterly interest on the amount of Rs.10 lakhs deposited by the Appellant.

8. Civil Application Nos.1071 of 2017 and 203 of 2022 stand disposed of in the above terms.

9. Civil Application No. 203 of 2022 stands disposed of in view of above order passed in Civil Application No. 1071 of 2017.

(ANUJA PRABHUDESSAI, J.)