

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

**INTERIM APPLICATION NO. 688 OF 2021
IN
FIRST APPEAL NO. 121 OF 2021**

Bhaves Pooj & Anr. ... Applicants/Appellants
(Orig. Defendant No.2 and 2(a))

Versus

Jagdish Ramniklal Padia & Ors. ... Respondents/Defendants

Mr. Sagheer A. Khan a/w Tanzila Kazi i/b Judicare Law Associates for the
Applicants/Appellants.

Mr. Rajendra R. Mishra for Respondent Nos.1 to 5.

CORAM : R.I. CHAGLA, J.

DATED : 30th NOVEMBER, 2022.

ORDER :

1 Heard the learned Advocate for the parties.

2 By this Interim Application the Applicants/Appellants are seeking stay of the operation and implementation of the judgment and decree dated 15.02.2020 passed by the City Civil Court at Bombay in Short Cause Suit No.7353 of 2006.

3 The Applicants/Appellants appear to be aggrieved with the finding of the Trial Court that Defendant No.1 was not entitled to the sale

or transfer of the entire flat from Defendant Nos.2 and 2(a) by virtue of agreement of sale dated 18.03.2006. There was an issue of limitation which has been held against the Defendants. The Applicants/Appellants are seeking stay of paragraph 3 of the operative part of the order which is a declaration that the Plaintiffs are entitled for vacant and peaceful possession of their one half share in the suit flat from Defendant Nos.2 and 2(a) as prayed in the Suit.

4 The learned Counsel appearing for the Respondents who are the Original Plaintiff Nos.1 to 5 in the Suit has objected to any stay is of the operation and implementation of the impugned judgment and decree dated 15.02.2020 being granted. He has submitted that it has been rightly held by the Court below that the agreement of sale/sale deed dated 18.03.2006 executed with one Rita Padia, Defendant No.2 in the Sui by which Defendant No.1 has claimed that they are entitled to sale or transfer of the entire suit flat is illegal and cannot be given effect to as Defendant No.2 is not the owner of the entire Suit flat.

5 The learned Advocate for the Respondent / Original Plaintiff Nos.1 to 5 has submitted that the Appellants were not even residing in the suit premises. Accordingly, he has submitted that there is no merit in the Interim Application.

6 Having considered the Interim Application, it is noted that the Interim Application has been taken out on 05.02.2021 which sought a stay of the impugned judgment and order which had been passed on 15.02.2020. There is no explanation in the Interim Application as to the delay in seeking stay of the impugned judgment and order passed by the lower Court. Further, the agreement of sale/sale deed dated 18.03.2006 executed by Rita Padia, Defendant No.2 in the Suit in faovour of Appellants has been held to be illegal and bad in law to the extent of one half share of the Plaintiffs in the suit flat. Thus, it has been held that the entire suit flat could not have been sold to the Appellants. Further, it is the case of the Original Plaintiff Nos.1 to 5 that the Appellants were not residing in the suit flat after Claimants purchased the suit flat.

7 At this stage there can be no stay the operation and implementation of the judgment and decree dated 15.02.2020 passed by the trial Court in Short Cause Suit No.7353 of 2006.

8 Interim Application is accordingly disposed of.

(R.I. CHAGLA, J.)