

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

**APPEAL FROM ORDER NO.410 OF 2022
WITH
INTERIM APPLICATION NO.2720 OF 2022
IN
APPEAL FROM ORDER NO.410 OF 2022**

Urmila P. Thakur and Ors.

...Appellant

Versus

Umakant Havaladar Singh

...Respondent

...

Mr. J.S. Yadav i/b. Mr. B.P. Shukla for the Appellant.

Mr. Ketan Parekh i/b. M/s. K.R. Parekh and Co. for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 29th JUNE, 2022.

P. C. :-

1. By consent, heard finally at the stage of admission.
2. It is brought to my notice that on 13/01/2011 in Notice of Motion No.3560 of 2009 in Suit No.2450 of 2009 filed by the present Appellants, learned counsel for Respondents herein, under instructions had made a statement that pending hearing and final disposal of the suit, Respondent No.1 shall not dispose of sell, alienate, encumber and/or create any third party rights in respect of the suit flat. Said statement was accepted and in view of the said statement, notice of

motion was disposed of.

3. The Respondents filed a separate notice of motion No.1324 of 2021 in Suit No.7177 of 2001 in respect of the same subject matter wherein the Respondent had sought leave to give the suit flat on leave and license basis. The learned Judge has allowed the said notice of motion and permitted the Respondent to give suit flat on leave and license basis. Thus as on date there are two conflicting orders, i.e. (i) Order in Notice of Motion No.3560 of 2009 in Suit No.2450 of 2009 wherein the statement is recorded that the Defendant No.1 would not create third party right in respect of the suit flat and (ii) the impugned order in notice of motion No.1324 of 2021, which grants permission to the Plaintiff to create third party rights.

4. In view of the above, learned counsel for the Respondents concedes that the impugned order dated 05/03/2022 needs to be set aside. He further seeks leave to file notice of motion in Suit No.2450 of 2009 for modification of order dated 13/01/2011.

5. Hence, the appeal is allowed. The impugned order is set aside with liberty to the Respondents Plaintiff to file separate notice of motion in Suit No.2450 of 2009 for modification of order dated

13/01/2011. In the event such application is filed, learned Judge shall decide the same on its own merits.

6. Appeal as well as the civil application stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)