

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.428 OF 2023**

Sanjay Tukaram Katkar]
Age - 58 years, Occupation: Advocate]
Residing at 134/Kinje Villa,]
Flat No.1102, Shri Parmar Guruji Marg,]
Parel, Mumbai - 400 012.] **Appellant/
Orig. Defendant No.1**

Vs.

1. Smt. Neelima Sanjay Kadam,]
Aged about 57 years, Occupation:]
Service, Residing at Mistry Nagar,]
Building No.2, Flat No.22, Pandurang]
Naik Road, Shivaji Park, Dadar,]
Mumbai - 400 016.] **Respondent No.1/
(Original Plaintiff)**

2. Arvind Jain]
Age - not known, adult, Occupation:]
Business, Conducting Business in the]
name and style as Shagun Construction] **Respondent No.2/
(Orig. Defendant No.2)**
Prathamesh Building, Senapati Bapat]
Marg, Dadar, Mumbai - 400 028.]

3. Sunita Avinash Nagtilak]
Aged - 52 years, Occupation : Service,]
Residing at A7, New Prabha]
Apartment, Behind Mahila Hospital,]
Next to MTNL Colony,]
Hotgi Road, Solapur - 413 001.] **Respondent No.3
(Orig. Defendant No.3)**

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Mr. Santosh Vishwakarma, for Appellant.

Mr. H.R. Pawar, for Respondents.

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CORAM	: PRITHVIRAJ K. CHAVAN, J.
RESERVED ON	: 6th JUNE, 2023.
PRONOUNCED ON	: 12th JUNE, 2023.

ORDER:

1. Heard learned Counsel for the appellant and the respondents.
2. Appellant is the original defendant No.1 who is aggrieved with the impugned judgment and decree passed by the City Civil Court, Mumbai on 2nd January, 2023, thereby decreeing Short Cause Suit No.2741 of 2013. The Court below had declared Respondent No.1-plaintiff's 1/3 share in the suit premises as well as in the new premises which was granted as permanent alternate accommodation in lieu of the suit premises. The Court below also directed the appellant to deliver possession of 1/3 share of the respondent No.1 in the permanent alternate accommodation. The appellant has been restrained from creating any third party interest in 1/3 share of respondent No.1 in the new permanent alternate accommodation.
3. Appellant and respondent No.1 are real brother and sister. Respondent No.1 had sought relief of declaration and possession of

her 1/3 share in the suit premises i.e Plot No.134, Kinjal Villa CHS Ltd., Flat No.1102, 11th floor, Shri Parmar Guruji Marg, Parel, Mumbai - 400 012 which has been allotted in lieu of old tenement i.e Room No.5, Ground Floor, Sushma Sadan, Shri Parmar Guruji Marg, Parel, Mumbai - 400 012. Admittedly, old premises stood in the name of uncle of the appellant and the respondent No.1 namely Bhagwan Krishnaji Katkar.

4. Learned Counsel for the appellant argued that the trial Court failed to appreciate Appendix B of Notification of Maharashtra Housing Department dated 16th August, 2010 as well as the evidence adduced by the appellant as well as the respondent No.1.

5. On the other hand, learned Counsel for respondent No.1 supported the impugned judgment and decree which, according to him, only to the extent of declaring 1/3 share of respondent No.1. He invited my attention to the cross-examination of appellant-D.W.1- Sanjay Katkar from which it is evident that respondent No.1 had her share in the suit property. It would be apposite to extract paragraphs 25, 26 and 27 of the cross-examination of the appellant, which read thus;

"25. Bhagwan Krushnaji Katkar, my uncle was the tenant of the old room i.e Room No.5, *Sushma Sadan, Parel, Mumbai - 12*. Since birth, I, plaintiff and Deft. no.3 were residing at Room No.5, *Sushma Sadan*. My uncle had given NOC to transfer the tenancy in the name of my father and executed an affidavit to that effect in the year 1992. Till the demolition of *Sushma Sadan* building, the rent receipt of Room no.5 was standing in the name of my uncle only. The electric bill of Room No.5 was transferred in the name of my father till the demolition of *Sushma Sadan* building.

26. *Sushma Sadan* building was demolished in the year 2010 for the purpose of re-development. Now I am shown para 18 of my affidavit (Exh.23). I have no rent receipt to show that after the death of my mother, I became sole occupant and tenant of Room no.5. It is correct to say that it is false to say that after the death of mother, I became sole occupant and tenant of Room no.5 as mentioned in para no.18 of my affidavit.

27. Now, I am shown para 16 of my affidavit (Exh.23). My mother has not given in writing to *MHADA* and Deft. no.2 to accept me as a occupant and tenant of Room no.5. The officials of *MHADA* had prepared certified list of tenants and occupants of *Sushma Sadan* building, who are eligible for permanent alternate accommodation in the new building. *MHADA* has certified the names of my mother *Malati* and myself as certified occupants in respect of Room No.5. I was having personal

knowledge that my and my mother's name was jointly certified as a tenant and occupant of room no.5. I never raised any objections with the *MHADA* to said certification".

6. In paragraph 29, the appellant admits that respondent No.1 never relinquished her right in respect of Room No.5 as well as new premises. In paragraph 30, he also admits that "Exhibit 19" which is an affidavit-cum-undertaking was executed by him in favour of respondent No.1.

7. As such, there is no substance in the argument of the learned Counsel for the appellant in view of the correct and legal findings arrived at by the trial Court, especially, in view of the admissions given in the cross-examination by the appellant. I, therefore, find no substance in the appeal. Hence, the appeal stands dismissed.

8. In view of dismissal of appeal, pending applications, if any, stand disposed of.

[PRITHVIRAJ K. CHAVAN, J.]