

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

**APPEAL FROM ORDER NO. 619 OF 2022**

Mrs. Rohini W/o. Suresh Saini Nee  
Miss. Rohini Khandu Jadhav ...Appellant  
Versus  
Mr. Deepak Khandu Jadhav ...Respondent  
...  
Ms. Karuna K. Yadav, for Appellant.  
None for Respondent.

...  
**CORAM : SANDEEP V. MARNE, J.**  
**DATE : OCTOBER 10, 2023.**

**P.C.:**

1. The challenge in the present Appeal is to the order dated 3 March 2022 passed by the City Civil Court dismissing Notice of Motion No.3528 of 2014 filed by the Appellant-Plaintiff seeking temporary injunction.
2. The Appellant-Plaintiff has filed SC Suit No.2515 of 2014 before the City Civil Court in respect of residential premises bearing Room No.211 at Ambedkar Chawl, admeasuring 10' X 20' consisting of two rooms on ground floor and two rooms on upper floor, at Ganesh Nagar Co-operative Society, Shanti Nagar, Sainath Nagar Road, Golibar Road, Mumbai 400 086. The Defendant is Plaintiff's brother. The Plaintiff has sought a declaration that

**Corrected version of order dated 10.10.2023 pursuant to speaking to minutes of order dated 20.10.2023.**

Defendant does not have right title or interest in the suit property. In the suit, Plaintiff filed Notice of Motion No.3528 of 2014 for grant of temporary injunction. She sought appointment of Court Receiver in respect of the rooms situated on the upper floor, which were taken into possession by the Defendant. She also sought injunction against the Defendant from dispossessing her from the two rooms in her possession on the ground floor. She also sought injunction against the defendant from creating any third party rights in respect of the two rooms on the upper floor of the suit property. The City Civil Court has proceeded to reject the Notice of Motion.

3. I have heard Ms. Yadav, the learned counsel appearing for the Appellant. This Court had issued notice to the Respondent on 21 September 2022. Office report shows that the notice has been duly served on the Respondent, however, none appears for the Respondent.

4. It appears that the suit structure consists of four portions. There are two small rooms on the ground floor and two small rooms on the upper floor. Plaintiff has claimed in her suit that she was earlier possessing the entire suit structure consisting of four rooms and that the Defendant has illegally occupies two rooms on the upper portion of the suit structure.

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Plaintiff claims exclusive right title and interest in respect of the entire suit property on the strength of a Will executed in her favour by her father. The Will has been executed in favour of inter alia Plaintiff's mother, Plaintiff and sister Hemalata. It appears that the mother has already expired and sister Hemalata is missing. Therefore the Plaintiff claims exclusive right title and interest in respect of entire suit structure consisting of four small rooms.

5. It is an admitted position that the Will has not been probated. It is on this ground that the City Civil Court has refused to believe the theory of the Plaintiff about exclusive ownership in respect of the entire suit structure. In my view at this juncture, the issue of ownership would not really be relevant. It appears to be an admitted position that the Plaintiff is occupying the two rooms on the ground floor, whereas the Defendant has taken possession of two rooms on the upper floor. In his written statement, the Defendant has made following pleadings:

“Defendant is the residing at the cause title of suit premises bearing is in exclusive, use, occupation and possession of a residential premises bearing No.211 at Ambedkar Chawl, total admeasuring about 10' X 20' consisting of two rooms on the first floor, situate at Ganesh Nagar Co-op Society, Shanti Nagar, Sainath Nagar Road, Golibar Road, Mumbai 400 086. Defendant denies rest of the contents of the said paragraph No.1.”

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6. From the above pleadings, it appears that the Defendant admits possession of Plaintiff in respect of two rooms on the ground floor.

7. Irrespective of the Will and even if the defence of Defendant is to be accepted, Plaintiff would have some right, title and interest in the suit property. She admittedly possesses two room on the ground floor. In that view of the matter, the City Civil Court ought to have granted injunction in favour of Appellant-Plaintiff to protect her possession in respect of the two rooms on the ground floor. The City Civil Court could also have granted injunction to restrain the Defendant from creating any third party rights in respect of any of the rooms of the suit structure.

8. Accordingly, the Appeal partly succeeds. Order dated 3 March 2022 passed by the City Civil Court is set aside. During pendency of the suit, the Defendant shall stand restrained from dispossessing the Plaintiff in respect of two rooms in her possession on the ground floor of the suit structure. Similarly the Defendant is restrained from creating any third party rights in respect of any of the rooms of the suit structure.

9. With the above direction, the Appeal is disposed of.

**(SANDEEP V. MARNE, J.)**

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