

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

**APPEAL FROM ORDER NO. 639 OF 2023  
WITH  
INTERIM APPLICATION NO.15546 OF 2023**

Geeta S Rijhwani

Nee Shobha C. Khanchandani

... Petitioner

Versus

Narendra C. Khanchandani And Anr.

... Respondents

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**Mr. Vishal Kanade**, a/w. Mr. Aseem Naphade, i/b. Ms. Megha Chandra,  
Mr. S. J. Khera for Appellant.

**Mr. Pankaj Thatte**, a/w. Mr. Amit Sharma i/b. Mr. Harsh Parte, Mr. Ranjit  
Agashe, Ms. Vinsha Acharya, Mr. Nikhil Sonar for Respondent.

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**CORAM : SANDEEP V. MARNE, J.**  
**RESERVED ON : 17 OCTOBER 2023.**  
**PRONOUNCED ON : 26 OCTOBER 2023.**

**JUDGMENT:**

By this Appeal, Appellant challenges Order dated 03 March 2023 passed by the City Civil Court allowing Notice of Motion No. 2085 of 2021 filed by the Plaintiffs / Respondent Nos. 1 and 2 in terms of prayer clause (b) which reads thus :-

b) Pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to grant an order of injunction thereby restraining the Defendant, acting either by herself or

through her agents, servants, and/or any person claiming through or under her or on her behalf from disturbing the peaceful occupation, possession and use of the Applicants/Plaintiffs over, in and of the said Suit Property, being Flat No. 202, E Wing, Crystal Palace Co-operative Housing Society Ltd., formed under the provisions of Maharashtra Co-Operative Societies Act, 1960, bearing registration number MUM/WP/HSG/TC/10216/98-99, dated 15/02/2019, situated on Linking Road, Opposite corner of Ramchandra Lane Extension, Malad (West), Mumbai - 400064, admeasuring about 466 Sq Fts carpet area, situated under land bearing CTS No. 307 of Village Valani, Taluka-Borivali, District - Mumbai Suburban, along with Five fully paid up shares of Rs. 50/- each bearing distinctive Nos. 0311 to 0315 (both inclusive), comprised under Share Certificate No. 18 issued by the Crystal Palace Co-operative Housing Society Ltd, in any manner whatsoever;

2. Plaintiff No.1 and Defendant are siblings. Plaintiff No. 2 is the daughter of Plaintiff No. 1. Plaintiff's case, as captured from pleadings in the plaint, is that Plaintiff No. 1 was engaged in a business which resulted in losses. That all the assets of Plaintiff of No. 1 were attached by the bank, on account of which his residential flat was also auctioned by the bank. Since the family of the Plaintiff did not have any place of residence, they were forced to reside in a rented premises in a building named Crystal Palace Co-operative Society, Malad. It is contended that Plaintiff No. 1 desired to purchase a residential flat in the same building Crystal Palace. His elder sister (Defendant) showed willingness to provide financial assistance to Plaintiff No. 1, who was not in a position to secure any loan from financial institutions. Under such arrangement, the flat bearing No. 202, E-Wing, Crystal Palace Co-operative Society,

Linking Road, Malad (West) Mumbai 400 064 came to be purchased in the name of the Defendant. Plaintiffs aver that the purchase transaction in Defendant's name was with an oral understanding that the Plaintiff No.1 and his family would permanently reside in that flat and that the Plaintiff of No. 1 would repay the entire amount of consideration of Rs. 15 lakhs borne by the Defendant, after which the flat would be transferred in the name of Plaintiff No. 1. It appears that the Defendant paid amount of Rs. 3,50,000/- from her own account and availed loan of Rs. 11,50,000/- for purchase of the flat. This is how the flat came to be purchased in the name of the Defendant, but Plaintiff and his family members started residing in the same.

3. Plaintiff claims that in terms of the oral agreement, Plaintiff No. 1 transferred the amount of Rs. 10 lakhs from his company account in the Defendant's account on 06 August 2011 towards part payment of consideration amount for purchase of the suit flat. That Plaintiff No. 1 further paid amounts of Rs.6,00,000/- on 05 March 2013, Rs.5,00,000/- on 14 March 2013 and Rs. 3,50,000/- on 30 October 2013 from the accounts of Plaintiff No. 2 in favor of Mr. Suresh Rijhwani (Defendant's husband). Plaintiffs accordingly claim that by now a sum of Rs.24,50,000/- has been paid by Plaintiffs to the Defendant/her husband as against the consideration amount of Rs.15,00,000/- borne by Defendant. That the additional amount of Rs.9,50,000/- was paid as per original oral agreement. Plaintiffs claim that despite repeatedly urging the Defendant, she failed to execute a sale deed in respect of the suit flat in

the name of the Plaintiffs. Since the Defendant failed to execute the sale deed in favor of the Plaintiffs, they have instituted S.C. Suit No. 1404 of 2021 in the City Civil Court seeking declaration that they are the exclusive and absolute owners in respect of the suit flat and further seeking prayer for specific performance of the oral agreement. Further injunctive relief to restrain Defendant from claiming any right in respect of the suit property has also been sought. In the suit, Plaintiffs filed Notice of Motion No. 2085 of 2021 to restrain Defendant from creating any third-party rights and from disturbing Plaintiffs' possession over the suit flat. The City Civil Court has partly allowed the Notice of Motion granting only prayer clause (b) in the Motion, restraining the Defendants from disturbing Plaintiffs' possession over the suit flat. Defendant is aggrieved by the Order passed by the City Civil Court and has filed the present Appeal.

4. Mr. Kanade the learned counsel would appear on behalf of the Appellant/ Defendant. He would submit that the Plaintiffs failed to make out any *prime facie* case for grant of any injunctive relief against the Defendant. He would take me through various findings recorded by the City Civil Court in support of his contention that findings clearly demonstrate non-existence of a *prima facie* case in favour of the Plaintiffs. That Plaintiffs have not challenged the findings recorded in paragraph 9 of the City Civil Court's order. On relying as those findings, no case was made out for grant of any temporary injunction against the Defendant.

5. Mr. Kanade further submit that Defendant is the exclusive owner of suit flat as the same has been purchased by her in her own name and out of her own funds. That there is no agreement in writing by which the Defendant has ever agreed to sale the suit flat in favor of Plaintiffs. That even if possession of Plaintiffs over the suit flat is assumed, Defendant in her capacity as lawful owner must be permitted to dispossess the Plaintiffs by following due process of law. That Defendant has accordingly initiated proceedings under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (**Senior Citizens Act**) for seeking eviction of Plaintiffs from suit flat. That on account of order of injunction granted by the City Civil Court, the Maintenance Tribunal has adjourned the proceedings before it *sine die*. That City Civil Court's order is coming in the way of the Defendant seeking eviction of Plaintiffs by following the due process of law.

6. *Per Contra* Mr. Thatte, the learned counsel appearing for Plaintiffs would oppose the Appeal and support the Order passed by the City Civil Court. He would submit that having accepted amounts of Rs. 24,50,000/- from Plaintiffs, the Defendant cannot continue to claim ownership in respect of the suit flat. That on account of payment of full consideration as well as additional amount in pursuance of the oral agreement, Plaintiffs have become exclusive owners in respect of the suit flat. That the suit flat was purchased in the name of Defendant only on account of the fact that Plaintiff No. 1 was unable to procure any credit

facilities because of his weak financial position at that time. That it was a pure family arrangement between the elder sister and brother wherein the sister had offered help to ensure that the brother would be in a position to purchase flat for residence of his family. Honouring the said arrangement, the elder sister accepted various amounts from Plaintiffs from time to time and now wants to back out of the said arrangement. He would invite my attention towards the letter dated 22 March 2017 addressed by Defendant to the Secretary of the Society confirming that she was intending to sale the flat to Petitioner No. 1. That the said letter would leave no matter of doubt that oral arrangement exists between the parties. He would submit that Plaintiffs have been in lawful possession of the suit flat since the year 2006 and the City Civil Court has rightly restrained the Defendant from dispossessing them from the suit flat. He would submit that interference in the Order of City Civil Court is therefore not warranted. He would pray for dismissal of the Appeal.

7. I have considered the submissions canvassed by the learned counsels appearing for parties. Though the theory of oral agreement to sale set up by the Plaintiffs may appear to be slightly unbelievable on its first blush, upon deeper scrutiny, there appears to be some truth in the same. There are four factors which would *prime facie* demonstrate existence of some arrangement by which Defendant may have agree to execute sale deed of suit flat in favour of the Plaintiffs. Firstly, the relationship between the parties. The oral agreement is not sought to be established amongst strangers. Plaintiff No. 1 is the brother of

Defendant. Secondly, Plaintiffs have placed on record before the City Civil Court bank statements showing payment of Rs. 24,50,000/- to the Defendant. Thirdly, Defendant herself wrote to the Society on 22 March 2017 that she was intending to execute a sale deed in respect of the suit flat in favour of Plaintiff No. 1. The fourth and most vital factor is the admitted fact that Defendant, after having purchased the flat in her own name, has put Plaintiff No. 1 and his family in possession thereof. Admittedly there is no arrangement for payment of rent or license fees between the parties. Except the proceedings initiated under the provisions of Senior Citizens Act of late, she did not initiate any proceedings to seek eviction of Plaintiffs from the suit flat for the last 17 long years. These four factors *prima facie* tend show existence of some sort of arrangement between the parties.

8. While City Civil Court may have recorded some adverse findings against Plaintiffs in paragraph No.9 of its order, the same are recorded essentially to deal with Plaintiffs' claim towards ownership of the suit flat and temporary injunction to restrain the Defendant from creating third party rights. So far as the relief of temporary injunction to protect possession of the Plaintiffs is concerned, the City Civil Court has rightly held that Plaintiffs cannot be treated as a trespasser or caretaker in respect of the flat. On the contrary, the manner in which the entire transactions are executed leads credence to the assertion of the Plaintiffs that purchase of the suit flat in the name of the Defendant could be by way of arrangement between the elder sister and the brother. Be that as it may. Since Plaintiffs are in settled possession of the suit flat since the year 2006, they cannot be dispossessed during pendency of the suit.

9. So far as the proceedings filed by the Defendant seeking eviction of Plaintiffs under provisions of Senior Citizens Act are concerned, it will have to be noted that Plaintiffs have sought declaratory relief of ownership of flat flowing out of the oral agreement of sale. Whether such agreement exists and whether it can be enforced, is something which only Civil Court can decide. Similarly, only Civil Court can give a declaration as to whether Plaintiffs are owners in respect of the suit flat. In my view therefore mere pendency of proceedings filed by the Defendant before the Maintenance Tribunal could not have been a reason for City Civil Court to refrain itself from deciding the Motion for temporary injunction. Therefore Appellant's inability to pursue proceedings under Senior Citizens Act cannot be a reason to lift the temporary injunction validly granted by the City Civil Court.

10. The City Civil Court has exercised sound discretion in noting that Plaintiffs are in possession of the suit flat for the last 17 long years. It has therefore held a *prima facie* case exists for grant of temporary injunction in their favour. The other two tests of irreparable loss and balance of convenience are also satisfied by plaintiffs. Admittedly, the defendant is residing in her own house elsewhere and does not need the suit flat for a residence. On the other hand, Plaintiffs admittedly reside in the suit flat, and if temporary injunction was to be refused, the same would have resulted in their dispossession from the suit flat. The balance of convenience also tilted in favour of the plaintiff and against Defendant who has accepted amount of Rs. 24,50,000/- from plaintiffs till date.

11. After considering overall conspectus of the case, I do not find any patent error in the Order passed by the City Civil Court. No interference by this Court in the order of City Civil Court is warranted. The Appeal being devoid of merits, is dismissed without any order as to costs. Since the Appeal is dismissed nothing survives in the Interim Application and it is also disposed of.

12. Considering the nature of controversy involved in the suit, the City Civil Court is requested to expedite the hearing of the suit and to make an endeavour to decide it as expeditiously as possible, preferably within a period of two years from today.

13. The Trial Court shall decide the suit without being influenced by any of the observations made in the present Judgment.

**SANDEEP V. MARNE, J.**

This Judgment and Order is corrected as per the speaking to the minutes order dated 03 November 2023.

KISHOR  
VISHNU  
KAMBLE

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by KISHOR  
VISHNU  
KAMBLE  
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