

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 756 OF 2023
WITH
INTERIM APPLICATION NO. 15258 OF 2023**

Tukaram Govind Parkar, through
POA, Mr. Vishal Tukaram Parkar
and anr.

...Appellants

V/s.

Namdev Govind Parkar and anr.

....Respondents

Mr. Manjeet Lotankar, for the Appellants.

Mr. Abhay Parab, for Respondent No.1.

Mr. R.Y. Sirsikar, for Respondent No.2.

CORAM : SANDEEP V. MARNE, J.

Dated : 25 September 2023.

P.C. :

1. By this Appeal, the Appellant challenges order dated 10 July 2023 passed by the City Civil Court dismissing Notice of Motion No. 1261/2022 for grant of temporary injunction. Plaintiff claims that the suit premises originally stood in the name of his mother, Mandakini Parkar as the tenant of the Municipal Corporation for Greater Mumbai. She expired on 7 January 2010. It

appears that upon death of the mother, Defendant No.1, who is Plaintiff's brother applied to the Municipal Corporation for transfer of tenancy in his name. Accordingly, the Municipal Corporation transferred the tenancy in the name of Defendant No.1. It appears that, since the death of the mother, Appellant-Plaintiff never staked any claim in respect of the suit property with the landlord-Municipal Corporation. Accordingly the name of Defendant No.1 came to be recorded as the tenant in respect of the suit property. It is the case of Defendant No.1 that Appellant-Plaintiff has been given another premises as a family arrangement. Appellant-Plaintiff denies this position.

2. The admitted position is that, the Defendant No.1 got the suit premises transferred in his name in the records of the Municipal Corporation after the death of his mother. Admittedly, Appellant-Plaintiff did not raise any objection to such transfer in the year 2010-11. He is now seeking right in the suit property after ten long years. It is not in dispute that Defendant No.1 is in exclusive occupation of the suit structure. The City Civil Court has held that there is no question of creating any third party rights in respect of the suit structure as the same are the tenanted properties of the Municipal Corporation. In that view of the matter, it cannot be stated that any case was made out by the Appellant-Plaintiff for grant of any temporary injunction. If the Appellant-Plaintiff ultimately succeeds in establishing his right, title or interest in the suit structure at the time of final hearing of the suit, such right can be conferred on

him. As of now, no case is made out or grant of any temporary injunction during the pendency of the suit. The City Civil Court has rightly dismissed the Notice of Motion for temporary injunction. The Appeal being devoid of merits is **dismissed** without any orders as to costs.

3. With dismissal of the Appeal, Interim Application No. 15258/2023 taken out for stay does not survive. The same also stands disposed of.

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SANDEEP V. MARNE, J.

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