

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 153 OF 2022
WITH
INTERIM APPLICATION NO.1010 OF 2022

Mrs. Neha Rashesh Upadhyay ... Appellant
Versus
Smt. Vijaya Dilip Chodankar
wd/of Late Dilip Chodankar ...Respondent
...
Mr. M. A. Khan, for Appellant.
Mr. Asif Naqvi, for Respondent.
...

CORAM : SANDEEP V. MARNE, J.
DATE : OCTOBER 06, 2023.

P.C.:

1. The challenge in the present Appeal is to the order dated 9 November 2021 passed by the City Civil Court rejecting Notice of Motion No.1075 of 2020 filed by the Appellant-Defendant.

2. The Plaintiff is the step-mother of Defendant. Plaintiff has instituted a suit inter alia claiming 50% share in Flat No.35-D located in Mazgaon Terrace Co-operative Housing Society Ltd. Nesbit Road, Mazgaon. It appears that the flat is purchased in the name of Appellant-Defendant and there is dispute as to whether the father had contributed to funds for purchase

of the flat. The Defendant is an employee of MTNL and has been allotted a residential quarter, where she has been residing with her family. The step-mother is residing in the suit Flat No.35-D. The City Civil Court has already passed interim order in Notice of Motion No.4343 of 2018 restraining the Defendant from selling, transferring or creating any third party right in respect of that flat. The City Civil Court did not find it necessary to make any order with regard to dispossession of the Plaintiff from the suit premises as the Defendant did not express any desire to dispossess the Plaintiff from the suit premises.

3. Now the grievance of the Defendant is that the Plaintiff has started denying entry to the Defendant in Flat No.35-D. With that grouse, she filed Notice of Motion No.1075 of 2020. The City Civil Court has proceeded to dismiss the Notice of Motion by recording a finding that there is *mala fide* intention on the part of the Defendant in seeking entry into the Flat.

4. I have heard the learned counsel appearing for the Appellant and learned counsel appearing for the Respondent. There is no dispute to the position that the Plaintiff claims only 50% share in the suit Flat No.35-D. This would mean that there is no dispute to 50% ownership in the suit flat by the Defendant. The question is whether the Defendant, who is admittedly an

owner (either 100% or 50%, which would be decided at the final disposal of the Suit) can be denied an entry in the suit Flat No.35-D. It appears that since the Defendant is already residing in the service quarter, she is not planning to dispossess the Plaintiff from Flat No.35-D in any manner. The learned counsel for Appellant-Defendant makes a statement that the defendant shall not make any attempt to dispossess the Plaintiff from suit Flat No.35-D. She only desires to visit the suit Flat No.35-D intermittently since she has been brought up in that flat and has resided in the same for several years in the past.

5. In my view, the controversy involved in the present Appeal can be put to an end by directing following arrangements during pendency of the Suit:-

- i) The Plaintiff shall permit Appellant-Defendant with her husband and two daughters to enter into suit Flat No.35-D once a month for two hours. An advance intimation to that effect shall be given by the Defendant to the Plaintiff by telephone or by E-mail or Whats-app message or text message. Such entry would be subject to the availability of Plaintiff in the Flat.
- ii) As per the statement made by the learned counsel for the Appellant-Defendant, she shall not make any attempt to dispossess the Plaintiff from the suit flat while making entry therein.

iii) The Appellant-Defendant undertakes not to create any quarrel during the course of her visit in the flat. Similarly, the Plaintiff shall also not create any quarrel with the Defendant during the course of her visit to the Flat.

iv) During the course of her visit to the Flat, Appellant-Defendant shall not keep any of her articles in the Flat.

6. The above arrangement shall continue to operate till disposal of the Suit.

7. The City Civil Court shall expedite the hearing of the suit and to make an endeavour to decide the same as early as possible, preferably within a period of two years from today.

8. With the above directions, the Appeal is disposed of. In view of disposal of Appeal, Interim Application is disposed of.

(SANDEEP V. MARNE, J.)