

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 845 OF 2023
WITH
INTERIM APPLICATION NO.16198 OF 2023

Mr. Manohar Balwant Ghosalkar ...Appellant
Versus
Iitee Swapnil Ghosalkar And Others ...Respondents

Mr. S. Keswani, for Appellant.

...
CORAM : SANDEEP V. MARNE, J.
DATE : OCTOBER 20, 2023

P.C.:

1. The challenge in the present Appeal is to the order dated 6 September 2023 passed by the City Civil Court by which Plaintiff's Notice of Motion No.3198 of 2023 is rejected.

2. Plaintiff has instituted S.C. Suit No. 1920 of 2023 inter alia challenging the Gift Deed executed in favour of Defendant No.1 by which 50% share of the Plaintiff in the suit flat came to be gifted in favour of the Defendant No.1. Now Plaintiff claims that Defendant No.1 had obtained the Gift Deed by giving threats of implicating the Plaintiff in proceedings under Section 498-A of Indian Penal Code.

3. In the suit the Plaintiff filed Notice of Motion to restrain the developer from handing over possession of the suit flat to Defendant No.1. It appears that the flat was purchased by the Plaintiff and Defendant No.1 jointly while the building was under redevelopment. It is Plaintiff's contention that the Gift is void on account of the fact that the flat was yet to be constructed on the day on which the Gift Deed was executed. This is something which the trial Court will have to decide at the time of adjudication of the suit. Admittedly Defendant No.1 is 50% owner of the flat even if the Gift Deed is held to be void. On account of execution of the Gift Deed, she has acquired full ownership in respect of the suit flat. As and when Plaintiff succeeds in getting a declaration that the Gift Deed is void, his 50% ownership would revive.

4. In that view of the matter, the rights of the Plaintiff are sufficiently protected. No prima facie case is made out for grant of any interim injunction. The City Civil Court has rightly rejected the Motion. Appeal being devoid of merits, is dismissed without any order as to costs.

5. In view of disposal of Appeal, Interim Application does not survive and stands disposed of.

(SANDEEP V. MARNE, J.)