

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 1609 OF 2023**

**IN**

**SUIT NO. 443 OF 2022**

SHRIKANT  
SHRINIVAS  
MALANI

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SHRINIVAS MALANI  
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Heena Parvez Khokar @

Heena Mehboob Khokar & Anr.

...Applicants/Plaintiffs

**Versus**

Khurshid Mohammed Nazir Khokar & Anr.

...Defendants

\* \* \*

- Mr. Ajeet Manwari and Mr. Faisal Vora i/by A & A Legal, for Applicants/Plaintiffs.
- Mr. Sandeep Maurya and Ms. Simran Vishwakarma, for Defendants

\* \* \*

**CORAM : MANISH PITALE, J.**

**DATE : 30<sup>th</sup> JUNE, 2023.**

**P. C. :**

1. Heard, learned Counsel for the parties.
2. By this application, the Applicants (original Plaintiffs) are seeking the following relief.

“a. *That pending the hearing and final disposal of the Suit, this Hon’ble Court may issue mandatory directions to the Respondents to allow the Applicants and their parents to jointly stay in the suit flat along with the Defendants on such terms and conditions as may appear just and proper to this Hon’ble Court.*”

3. The Applicants have filed this suit against the Defendants for a declaration that the Defendants be held to be rank trespassers in

the suit field and also for a mandatory injunction directing the Defendants to be removed from the suit flat. Consequential direction of handing over possession of the suit flat is also sought by the Applicants and certain interim relief is also sought.

4. The Defendants have contested the claims made by the Plaintiffs herein. It is undisputed that the Plaintiffs and the Defendants are family members. The father of the Plaintiffs and father of Defendant No. 1 are brothers.

5. It is the case of the Plaintiffs that their father Mr. Mehboob Khokar had permitted the Defendants to stay in the suit flat temporarily, in the year 2016. It is their case that in the year 2022, the Defendants themselves threw out the father of the Plaintiffs as also the Plaintiffs from the suit flat, resulting in a Police complaint being filed against the Defendants.

6. The Defendants have denied all such allegations and they claimed to be in possession of the suit flat from the year 1999, further contending that the father of the Plaintiffs and the Plaintiffs have been in possession of another flat in the same building on the fourth floor. The Plaintiffs as well as Defendants have placed on record various documents in support of such rival claims.

7. The Police complaint led to investigation, which has

resulted in certain findings being rendered by the Police. Although, the learned Counsel appearing for the Defendants sought to specifically rely upon such material, this Court is not considering the present application on the touchstone of such material and the findings rendered in the police investigation.

8. Nonetheless, there are competing claims made by the rival parties in respect of the suit flat. Documents have been placed on record in support of their rival contentions, wherein, while on the one hand, Plaintiffs claims that they and their father have been in continuous possession of the suit flat and that Defendants were only temporarily inducted in the year 2016, on the other hand, Defendants claim to be in continuous possession for a considerable period of time, starting at least from the year 1999 and that the Plaintiffs and their father have all along resided in the aforementioned flat in the same building on the fourth floor.

9. When the present application is taken up for consideration in the backdrop of the aforesaid material, it is found that the Plaintiffs have, *inter alia*, claimed joint residence in the suit flat along with the Defendants on the ground that their father is suffering from serious heart ailment and in such a situation is compelled to climb stairs to reach the aforesaid flat on the fourth floor, particularly because the elevators in the said building are not

functioning. The said statement does indicate that father of the Plaintiffs as on today is indeed in possession of flat on the fourth floor of the same building.

10. It is alleged on behalf of the Defendants that the Plaintiff No. 1 is residing in the United States of America and Plaintiff No. 2 is resident of Vapi in Gujarat. This is stoutly denied by the learned Counsel for the Plaintiffs. Be that as it may, it is clear that contesting claims are being made between the parties, as regards the manner in which they were in possession of the suit flat. As on today, the pressing need claimed on behalf of the Applicants/Plaintiffs is the health condition of their father, who admittedly is not even a party to the proceedings.

11. This Court is of the opinion that considering and allowing the prayer made in the present application in such circumstances would only complicate the matter further. It is only after the Plaintiffs are able to establish as matter of fact, the basis of their claims to the suit flat that such a prayer could be entertained, if at all, in the facts and circumstances of the present case.

12. There is no merit in the present application and accordingly, it is dismissed.

**(MANISH PITALE, J.)**