

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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APPEAL FROM ORDER NO. 614 OF 2024
WITH
INTERIM APPLICATION NO. 12002 OF 2024

Bulchand Mulchand Aidasani ...Appellant
Versus
Lekhumal Mulchand Aidasani And Others ...Respondents

Mr. Dharmendra Damani a/w. Mr. Omprakash Verma, for Appellant.
Mr. G.N. Salunke a/w. Mr. Saunil R. Sharma, for Respondent No.1.

CORAM : M.M. SATHAYE, J.

DATE : 16th DECEMBER, 2024

P.C. :

1. Heard learned counsel for the parties.
2. The appeal is filed challenging the Order dated 30.03.2024 passed by the City Civil Court, Borivali Division, Dindoshi, Mumbai in Notice of Motion No. 506 of 2024 in S.C. Suit No. 199 of 2024. By the said impugned Order, the motion taken out by the Appellant for restraining Respondent No. 1 from creating third party interest and restraining him from obstructing or preventing the Appellant from peaceful use and occupation of the suit premises, is rejected. A prayer was also made for an interim injunction restraining Respondent No. 3 – Society from transferring share certificate in the

name of Respondent Nos.1 and 2 without written consent or NOC of the Appellant.

3. Learned counsel for the Appellant submitted that he is claiming on the basis of the Will dated 06.08.1993 of the deceased mother of the Appellant and Respondent Nos.1 & 2, by which the suit premises are bequeathed between three sons equally. He submitted that the cause of action for filing the suit was when his entry in the suit premises was obstructed.

4. Learned counsel for Respondent No.1, on the other hand, submits that the impugned Order sufficiently protects the interest of the Appellant, in as much as Respondent No.1 is already restrained from selling or mortgaging the suit premises. He submitted that the Appellant was never in possession of the suit premises, and he is resident of Venezuela and has never been in possession or has never come to the suit premises over a long period of time. He submitted that Respondent No. 1 is claiming exclusive right through subsequent Will dated 07.07.2000 executed by the mother.

5. Perusal of the impugned Order shows that the rival contentions are considered. The suit is apparently filed for partition and therefore, to protect the claim of 1/3rd share therein, an injunction is already granted.

6. Respondent No.1 is basing his claim on subsequent Will dated 07.07.2000 executed by mother under which the suit premises are exclusively bequeathed to Respondent No.1. The said will prima facie shows revocation of all earlier wills/codicils. The question here is

whether the possession as claimed by the Appellant of the suit premises can be protected when there is nothing on record to show that the Appellant was in possession of the suit premises after the Will of 07.07.2000.

7. The learned Trial Judge, in paragraph 14 of the impugned Order, has considered that Respondent No.1 has produced material to show that he is in possession and paying necessary electricity and maintenance bill in respect of the suit premises. Based on such material, the prayer regarding not to disturb possession is refused.

8. The impugned Order is thus neither perverse nor there is any error apparent on the face of the record. The impugned Order is passed on material available before the Court. Hence no fault can be found with the same. I do not find this to be a fit case, to substitute my discretion in the place of discretion exercised by the learned Trial Judge.

9. Accordingly, the Appeal from Order and pending interim application are dismissed.

10. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)