

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 788 OF 2024
WITH
INTERIM APPLICATION NO. 14568 OF 2024
IN
APPEAL FROM ORDER NO. 788 OF 2024

Jyotsna Virsen Kowli ...Appellant
Versus
Ekveera Apartments CHS Limited
Through Its Chairman/Secretary And Others ...Respondents

Dr. Abhinav Chadrachud (through V.C.) a/w. Rishi Nirav Bhatt i/b.
Kishor Ajetrao, Vanraj Shinde, for Appellant/Applicant.
Mr. Yatin Malvankar i/b. Amrita A. Ghone, for Respondent No.1.
Mr. Vinod Joshi for Respondent No.2.

CORAM : M.M. SATHAYE, J.

DATE : 18th NOVEMBER, 2024

P.C. :

1. Heard learned counsel for the Appellant-original Defendant No.1 (through VC) and learned counsel for the Respondent No.1/Plaintiff-Society and Respondent No.2-original Defendant No.4.
2. By the impugned order dated 14/08/2024, a notice of motion filed by the Respondent No.1 Society is allowed thereby directing the present Appellant and her sons - Defendant Nos.2 & 3 to quit, vacate and handover quiet, vacant and peaceful possession of flat No.32 or

flat No.31A as asserted to be existing by the Appellant, on 3rd floor of subject matter building. The suit is filed for declaration and perpetual injunction about rights of Appellant and her sons. It is admitted position that under a resolution of the Respondent No. 1 Society, the subject matter building is to be self-redeveloped. It is not brought to the notice the Court that the subject matter building has received any notice of being dilapidated.

3. Appellant is 76 years old widow of deceased Virsen Kowli. It is the case of the Appellant, based on documents produced, that pursuant to a letter/request by the brothers of her husband (Mr. S.M. Kowli and Mr. M.M. Kowli) dated 17/08/1998 for conversion of 2 flats on 3rd floor into 3 flats to accommodate 3rd brother (Appellant's husband) and to transfer the created flat to said 3rd brother, the then committee members had requested the Mumbai District Co. Op. Hsg. Federation Ltd. by a letter dated 10/12/1998 for advising it as to whether a portion out of existing flat/s can be carved out and transferred. It appears that under letter dated 27/01/1999, the Federation had permitted Respondent No.1 society to have a third membership by allotting additional share certificate to the third member and increasing their share certificates, if the third flat has a separate entrance, toilet block and kitchen. It is on the basis of these documents along with documents such as an electricity bills of November 1999, August 2010 and a declaration issued by Respondent No.1-Society that Appellant's son Rohan is *bona fide* resident of flat No. 31A (carved out from flat No. 32), it is urged that apparently, flat No. 31A exists since long and it is occupied by the

Appellant and her sons. It is submitted that by the impugned order, final relief is granted at interim stage. It is submitted that since the Appellant is occupant of said flat No. 31A, she must be paid transit rent or necessary agreement be executed with her, subject to decision of dispute between her and her family members.

4. Learned counsel for Respondent No.1-Society has disputed the legality of such creation of flat No. 31A contending that documents relied upon by the Appellant will have to be tested. He submits that such second unit carved out of flat No.32 cannot be taken to be legally created and occupied. He further submits that such creation of flat No.31A and additional membership can not take place under law, by mere understanding between the family members of the Appellant.

5. Learned counsel for Respondent No.2, who happens to be sister-in-law of the Appellant, and who was earlier secretary of the Respondent No. 1 Society, submits that she has handed over the flat No.32 to the Society for the purpose of self-redevelopment in December, 2023.

6. Apparently there is dispute between the family members of the Appellant which is pending in the form of Suit No. 284 of 2023 in which present Respondent No.2 (sister-in-law) is Defendant No.1. This suit is pending. The brothers in the family have expired and two sisters-in-law (Appellant and Respondent No. 2) are fighting over flat No. 32 and flat No. 31A carved out of it.

7. It is pointed out by learned counsel for the Appellant that the

dispute about membership of Appellant for Flat No.31A is currently decided against her under order dated 09/05/2024 observing that a civil suit is pending between the Appellant and her family members. Learned counsel for Respondent No.1- society however submitted that the dispute between the family members is not the only reason for which membership dispute is held against the Appellant. Be that as it may.

8. On a query by Court, Learned counsel for Respondent No.1 Society fairly submitted that execution application is already filed for executing the impugned order for taking possession of the subject matter flat from the Appellant, and he is not in a position to make any statement about holding its hands till the next date.

9. Apparently, by the impugned order, almost final relief directing the Appellant to vacate the subject matter property is granted when both, the suit between Appellant and her family members and the present suit filed by Society, are pending.

10. In light of the aforesaid contentions, arguable case is made out. Hence, the following order.

(A) Issue notice of final disposal to the Respondents, returnable on **16/12/2024**. Learned counsel appearing for Respondent Nos. 1 & 2, waive service.

(B) Till next date, the impugned order dated 14/08/2024 is stayed.

(C) It is clarified that pendency of this appeal from order will not preclude the learned Trial Court from proceeding with the suit.

(M.M. SATHAYE, J.)