

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 90 OF 2024
IN
MISC. TESTAMENTARY PETITION (L) NO. 12845 OF 2021

Vitthal Chintaman Paradkar ... Appellant

V/s.

Reji Varghese & Anr. ... Respondents

WITH
INTERIM APPLICATION NO. 1464 OF 2024
IN
APPEAL NO. 90 OF 2024

Mr. Pradeep Thorat a/w Aniesh S. Jadhav for Appellant.

Mr. Samji Joseph i/by Uni Lex for Respondent No.1.

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.

DATE : 09th MAY, 2024

P.C.:

1. The present Appeal impugns an order dated 22nd January, 2024, by which, the Miscellaneous Testamentary Petition (L) No.12845 of 2021 came to be allowed by granting prayer clause (a) thereof which reads thus;

"(a) this Hon'ble Court be pleased to determine summarily the petitioner's right to possession and deliver the possession of the Flat No.T-11 (C11), situated at Kailas CHS Ltd., Bhatwadi, R. B. Kadam Marg, Ghatkopar (West), Mumbai-400084, Maharashtra to the petitioner."

2. The Appellant is the Respondent to the said Miscellaneous Petition and has by virtue of the Impugned Order been directed to deliver possession of the said flat in question to the Respondents.

3. Mr. Thorat, learned counsel for the Appellant points out that the Appellant has been in use, occupation and possession of the said flat for the last 30 years. He therefore submits that until the present Appeal is being heard, the Impugned Order not be given effect. He makes a statement to the Court that the Appellant shall not, in any manner, alienate, encumber, transfer and/or create any third party right, title or interest in respect of the said flat pending the hearing of the present Appeal.

4. We have heard learned counsel, perused the Impugned Order and find that the matter requires consideration. Hence, we are inclined to admit the Appeal. We

find that given it is not a disputed fact that the Appellant had been in use, occupation and possession of the said flat, the Impugned Order shall not be given effect to till the next date i.e. 13th June, 2024. The statement made by learned counsel appearing on behalf of the Appellant is accepted. **Hence Admit.**

5. List the matter on 13th June, 2024 for disposal at the stage of admission.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)