

MJ Jadhav

**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 ... Appellants/Applicants

vs.

Ekveera Apartments CHS Limited Through ... Respondents
Its Chairman/Secretary and Ors.

Mr. Vanraj Shinde for the Appellants/Applicants.

Mr. Amrut Joshi a/w Yazad Udawadia i/b Amruta Ghone for
Respondent No.1.

Mr. Vinod Joshi for Respondent No.2.

CORAM : GAURI GODSE, J.

DATED : 11th MARCH 2025

ORDER :-

1. This appeal is preferred by defendant no.1 to challenge the order passed in a suit preferred by the society. By the impugned order, the society's prayer in the notice of motion directing defendant nos.1 to 3 to vacate and hand over possession of the Flat No.32 on the third floor of the society's building is allowed. The society has filed the suit for a declaration that the defendant nos.1 to 3 have no right of whatsoever nature to obstruct the process of re-development. The society was required to file the suit as defendant

nos.1 to 3 were claiming independent right in an alleged Flat No.31A on the ground that Flat no.32 was bifurcated and defendant nos.1 to 3 were entitled to independent rights in respect of Flat No.31A. The contention raised by defendant nos.1 to 3 are not accepted and the society's notice of motion is allowed directing defendant nos.1 to 3 to vacate Flat No.32.

2. Learned counsel for the appellant submits that as per family arrangement between the defendants they were permitted to occupy part of Flat No.32, which was numbered as Flat No.31A. The defendant nos.1 to 3 further contended that they have also filed a suit for partition and separate possession in respect of Flat No.32.

3. Learned counsel for the appellant relied upon electricity bill in respect of Flat No.31A. The appellant, therefore, contended that she is entitled to an independent flat i.e. Flat No.31A, which was always recognized even by the society as an independent flat. The appellant also relied upon certificate issued by the society regarding residence proof, thereby contending that Rohan Kowli i.e. defendant no.3 was issued a certificate by the society stating that he is residing in Flat No.31A. Based on these documents learned counsel for the appellant submits that the society has always recognized Flat No.31A as an independent flat and thus, she is entitled to her

independent right in the re-development as against Flat No.31A.

4. Learned counsel for the society submitted that the Flat No.32 was owned by husband of defendant no.4 and he was the member. According to the learned counsel for the society Flat No.32 is the only recognized flat and there is no bifurcation as Flat No.31A. Learned counsel for the society further submits that as per the society's record defendant no.4 is the member of Flat No.32. He submitted that the appellant's claim regarding independent membership for Flat No.31A was rejected by the Deputy Registrar Cooperative Society. He submits that there is no independent proceedings pending for any kind of independent membership for Flat No.31A as claimed by the appellant.

5. Learned counsel for the society further submits that after following necessary procedure the re-development of the society's building was initiated. However, the members are suffering hardship as the appellant has not cooperated and not handed over possession of Flat No.32. He, therefore, submits that the society was constrained to file a suit seeking injunction restraining defendant nos.1 to 3 from obstructing the society in the process of re-development. He, thus, submits that the appellant i.e. defendant no.1 has no independent right in Flat No.32 or any other flat and

thus, she is not entitled to stall the re-development process. He, thus, submits that the impugned order is passed based on the record produce before the City Civil Court regarding the re-development process and Flat No.32 not being vacated by defendant nos.1 to 3.

6. Learned counsel for defendant no.4 submits that he has no objection, if Flat No.32 is taken that by the society for the re-development process. He disputes appellant's contention that there was any independent Flat No.31A as claimed by the appellant.

7. I have perused the papers of the appeal. There is no dispute regarding the re-development process being carried out by the society after following necessary procedure. The appellant i.e. defendant no.1 objects to the society's contentions on the ground of the family arrangement arrived between defendant nos.1 to 4. The appellant's claim is based on a separate suit filed in the City Civil Court for partition and separate possession. The documents produced on record have been examined by the City Civil Court for accepting the society's contention that as per the society record the only recognized flat is Flat No.32 and not Flat No.31A as claimed by the appellant. The family arrangement based on which the appellant stakes her claim is not recognized by the society. The documents on

record indicates that Flat No.32 was owned by defendant no.4's husband and thus, he was accepted as member by the society and subsequently, defendant no.4 is accepted as member of the society.

8. The City Civil Court, therefore, for want of any supporting documents has disbelieved the appellant's contention that she is occupier of Flat No.31A, which was allegedly subdivided out of Flat No.31 and 32. The contentions raised on behalf of the appellant regarding independent Flat No.31A is not supported by any valid document. The appellant, therefore, cannot be permitted to stall the re-development process initiated by the society after following the due procedure.

9. In the absence of any document in the name of appellant creating any independent right in respect of any independent Flat No.31A, the appellant's contention regarding her independent right cannot be accepted. The contentions regarding appellant's rights shall be independently decided in the suit filed by the appellant alongwith defendant nos.2 and 3 for partition. Pending the suit, the appellant cannot be entitled to object to the re-development process initiated by the society. As on date, the appellant neither has any right crystallized in her favour by any jurisdictional Court nor there is any document in favour of the appellant to support her contention

regarding any independent right regarding Flat No.31A.

10. In view of the aforesaid facts, reasons recorded by the City Civil Court in the impugned order cannot be faulted. The learned Judge of the City Civil Court has considered all the documents and recorded, prima facie, findings in favour of the society. Thus, in the absence of any right in favour of the appellant, she would not be entitled to retain possession of Flat No.32 and object to the re-development of the society. The appeal is devoid of any merits. Hence, the appeal is dismissed.

11. It is, however, clarified that the appellant would be entitled to agitate her claim in the suit filed for partition. Any observations in the impugned order or any observations in this order should not be construed any final decision on the rival contentions of defendant nos.1 to 3 in respect of Flat No.32 and the same be decided independently in the pending suit for partition.

12. In view of the disposal of the appeal, interim application is disposed of as infructuous.

13. Needless to clarify that any interim relief granted in this appeal stands vacated.

(GAURI GODSE, J.)