

NM No. 1288/2024

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ORDER

MHCC040031752024



IN THE BOMBAY CITY CIVIL COURT AT BOMBAY
BORIVALI DIVISION, DINDOSHI (BRANCH)

NOTICE OF MOTION NO. 1288 OF 2024
IN
CIVIL SUIT NO. 661 OF 2024

Nita Nilesh Bavishi

... Plaintiff

V/s.

Mr. Vinod Anupchand Bavishi & Ors.

... Defendants

Appearances :-

Adv. Farhan Khan for plaintiff present.

Adv. Ram Laxmipalli for defendants present.

CORAM: His Honour Judge

Shri Nandkishor L. More

(C. R. No.12)

Date : 15th September, 2025.

:ORAL ORDER :

This notice of motion is taken out by the plaintiff for order of mandatory temporary injunction against the defendants directing that to handover vacant and peaceful possession of the suit flat being situated on the fifth floor, Plot no. 40, Tagore Road, Santacruz (West), Mumbai – 400 054 and also mandatory directions against defendants to forthwith provide the plaintiff with access to the said flat, allow the plaintiff and her children to peacefully reside therein and defendants no. 1 and 2 be restrained from

alienating or parting with possession and/or creating third party right, title and interest in the suit flat till disposal of the suit.

2. According to the plaintiff, she is a sole owner of the suit flat by virtue of a registered gift deed dated 14th October 2022, where she was previously residing along with her late husband and children from the year 1997. It is averred that, in the month of May 2003, the plaintiff was constrained to leave the suit flat along with her children to escape physical abuse of her late husband. After the month of May 2003, the late husband of plaintiff had not allowed the plaintiff to reside or even enter the suit flat. He also dis-allow own children from residing suit flat. Accordingly, Divorce Petition was brought by the plaintiff against her late husband wherein she *inter-alia* sought complete and sole possession of the suit flat which had been gifted to her by virtue of registered gift deed pursuant to Memorandum of Family Arrangement .

3. Plaintiff's husband died on 22th November 2023. At that time the suit flat occupied by him. Thereafter, the defendant no. 1 and 2 herein have filed Civil Suit No. 8564/2023 before this court against the plaintiff thereby deny her ownership of suit flat which was her matrimonial home, the only shelter rightfully belonging to her and her children.

4. It is case of plaintiff that, after the marriage of plaintiff and Nilesh Bavishi., she came for cohabitation at flat no. 13 of Suvarndeeep Building, Santacruz, Mumbai. The Baveshi's family also own suit flat no. 51 which was acquired by the joint family in the name of Mrs. Jyotsna Baveshi & Vinod Baveshi (defendant no. 1) somewhere in the year 1997.

Defendant no. 1 Vinod separated from the joint family and permanently shifted to Coimbatore . Accordingly, defendant no. 1 was agreed to transfer his half of the right, title and interest in the suit flat to his mother Jyotsna Baveshi. As per the Family Arrangement, Memorandum of Understanding was executed on 19th April 1997, plaintiff and her late husband along with there children were moved out from the joint family. Thereafter, suit flat was treated as permanent residence of plaintiff and late husband Nilesh Baveshi. However thereafter, the marital discord of the plaintiff and late husband Nilesh Baveshi became worst. Thus, the plaintiff was constrained to leave her late husband and suit flat in around the year 2001 to protect herself. Thereafter, the plaintiff and family of Nilesh Baveshi decided to bring the family together of plaintiff by entering of Memorandum of Family Arrangement on in the month of June 2001. Thereby, It was agreed that, none of the party except the plaintiff Neeta has title interest and share in the suit flat and it was decided to transfer the share of suit flat in the name of plaintiff Neeta from the name of Jyotsna Baveshi and Vinod Baveshi.

5. On 11th June 2001, all the members of Baveshi's family including the defendant no. 1 and 2 agreed that, with effect from 1st June 2001 all the right,title and interest of the suit flat will devolve upon plaintiff only as a sole owner of suit flat. Defendant no. 1 also signed declaration in favour of plaintiff with intension to transfer the right, title and interest of suit flat and also undertake to sign further documents in favour of plaintiff.

6. It is further averd that, Mrs. Jyotsna Baveshi executed Power of Attorney in favour of plaintiff on 11th October 2000 to allow plaintiff to

do all necessary deed and documents on her behalf and for completing successful transfer of suit flat in the name of plaintiff. Registered gift deed was duly registered on 14th October 2022, duly signed by the Mrs. Jyotsna Baveshi and thus according to the plaintiff, she is sole owner of the suit flat. Pursuant to the said gift deed, the share certificate of suit flat has been transferred in the name of plaintiff by the defendant no. 3 Society. However, in the year 2003, once again due to marital disputes and differences between the plaintiff and her husband, she was constrained to leave the house with her children and to go to her parental home. Thereafter, the plaintiff and the children made several attempts to re-enter the suit flat but she was denied entry by the Nilesh Baveshi. The defendant no. 1 and 2 by filing Civil Suit no. 8564/2023 claim that, the suit flat is occupied by them and defendant no. 1 herein to co-own suit flat as 50% owner thereof. According to the plaintiff by virtue of gift deed executed by Mr. Jyotsna Baveshi and the declaration executed by the defendant no. 1 on 11th June 2001, she is lawful owner of the suit flat. The defendant have no legal right to remain in the possession of the suit flat. Therefore, the suit is for mandatory directions against the defendants to handover the possession of suit flat in favour of plaintiff.

7. The defendant no. 1 and 2 by filing reply to Notice of Motion contested the same on the grounds that, defendant no. 1 has never alienated or transfer his right, title and interest in the suit flat in the favour of the suit flat. It is further contended that, Mrs. Jyotsna Baveshi has executed the gift deed on 12th June 2001 in favour of the plaintiff due to love and affection and on the strength of letter dated 19th April 1997 issued by the defendant no. 1 due to love and affection of mother and keep atmosphere in family peaceful. However, at no point of time defendant

no.1 had intended to release his right in respect of suit premises. The deceased mother Mrs. Jyotsna Baveshi was having 50% share in the suit premises and therefore, gift deed executed by Mrs. Jyotsna Baveshi is neither valid nor binding upon defendant no. 1, because defendant no. 1 never consented for the execution of gift deed in favour of the plaintiff. The plaintiff has obtained the said gift deed under undue coercion and not of the free will of the deceased mother. The alleged gift deed is illegal and bad in law and not binding on the defendants. The defendant no. 1 maintain his claim of 50% in the suit premises. The plaintiff's husband Nilesh Baveshi died on 22th November 2023. The plaintiff left her husband Nilesh Baveshi when he required her presence, this inhuman behavior speaks volumes about plaintiff's intention to grab property of these defendants and there mother. Heard Learned Advocates for the plaintiff and defendants, perused the documents filed along with plaint and the reply filed by the defendant no. 1 and 2. Following points arises for my consideration and I proceed to record my findings there on for the reason stated herein.

	POINTS	:	FINDINGS
1	Whether plaintiff has made out the prima facie case?	:	In the negative.
2	Whether balance of convenience lies in favour of the plaintiff?	:	In the negative.
3	Whether plaintiff will suffer irreparable loss if the injunction as prayed is refused?	:	In the negative.

REASONS

8. As to point no. 1 to 3, I have gone through the averments made in the of plaint, Notice of Motion and reply filed by defendant no. 1 and 2. Admittedly the suit flat was acquired in the names of Mrs. Jyotsna Baveshi and defendant no. 1 Vinod Baveshi. Initially the plaintiff, her husband Nilesh Baveshi and there children were residing in the suit flat, due to marital discord between plaintiff and husband Nilesh, the plaintiff along with her children and started residing at her parental home. However, by amicable settlement, the plaintiff was brought back to the matrimonial home by the family members of Nilesh Baveshi. The Co-owner of suit flat Mrs. Jyotsna Baveshi executed gift deed on 12th June, 2001 in favour of plaintiff conveying share of her right,title and interest of the suit flat in favour of plaintiff. However, going through the documents placed on record, it does not furnish, the defendant no. 1 has over transferred his 50% right and title share in the suit flat premises in favour of plaintiff by executing valid documents of title. Therefore, even though the defendant no. 3 society has accepted the plaintiff as a member of society in place of Mrs. Jyotsna Baveshi in respect of the suit flat, no title of 50% share of plaintiff devolved upon the plaintiff. So, prima facie it is evident that, the defendant no. 1 is the owner of 50% of the suit flat and therefore, the plaintiff cannot claim her sole ownership right in the suit flat.

9. The plaintiff has specifically mentioned that, she had left this suit flat along with children somewhere in the year 2003. In the month of April 2023, she has filed Divorce Petition bearing no. 2087/2023 before the Learned Family Court, Bandra for desolation of marriage. The

plaintiff's husband Nilesh Baveshi expired on 22th November, 2023. Thereafter, the defendants have occupied the suit flat and they are in possession of suit flat at present. The defendants have challenged the gift deed executed by there mother in favour of plaintiff by filing separate Civil Suit No. 8564/2023 before this court which is pending for adjudication. At present the defendant no. 1 and 2 are in possession of the suit flat and they cannot be evicted by passing order of temporary injunction in mandatory form.

10. The learned advocate for the plaintiff placed reliance in judgement of Hon'ble Apex Court in Dorab Cawasji Warden Vs. Coomi Sorab Warden and Ors. in Manu/SC/0161/1990. The facts mentioned in the judgment are not clearly distinguish facts of the present case. Therefore, not applicable. Learned advocate for the defendant has placed reliance in judgement of Hon'ble Apex Court in Metro Marins v/s Bonus Watch Co. Pvt. Ltd in Supreme Court 2004(2) RCR arising out of Civil Appeal No. 5901 of 2004 dated 10/09/2004 wherein Hon'ble Apex Court has held that, granting of any interim order directing handing over of possession would only mean decreeing the suit even before trial. The Hon'ble Apex court has also observed that, *"As noticed by this Court in the case of Dorab Cawasji Wardent v. Coomi Sorab Warden (supra) has held that an interim mandatory injunction can be granted only in exceptional cases coming within the exceptions noticed in the said judgment. In our opinion, the case of the respondent herein does not come under any one of those exceptions and even on facts it is not such a case which calls for the issuance of an interim mandatory injunction directing the possession being handed over to the respondent"* The observation of Hon'ble Apex Court in Metro Marins (Supra) are relevant to decide the present Notice of Motion.

11. True it is, the plaintiff has acquired 50% title, interest in the suit flat by virtue of gift deed. Still the defendant no. 1 being the owner of 50% share of suit flat, cannot be directed to handover the possession of suit flat to the plaintiff at there interim stage. There is no any convincing documents on record to show that, defendant no. 1 has transferred his right, title and interest in favour of plaintiff by registered legal documents. As such at this stage the plaintiff has not acquired entire share in the suit flat and therefore it is cannot be said that, plaintiff is entitled for possession against the co-owner in the form of mandatory directions. Hence, I come to the conclusion that, the plaintiff is failed to establish prima facie case of her claim of ownership of the suit flat. Consequently points of balance of balance of convenience and irreparable loss are also not in the favour of plaintiff, in the circumstances, I proceed to pass following order.

ORDER

1. Notice of Motion No. 1288 of 2024 stands dismissed.
2. Costs in main cause.

Date : 15.09.2025

(Nandkishor L. More)
Judge
City Civil Court,
Borivali Division, Dindoshi.

Dictated by HHJ on : 15.09.2025
Transcribed on : 16.09.2025, 17.09.2025 & 18.09.2025
Checked & Signed by HHJ on : 24.09.2025

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

UPLOAD DATE : 24.09.2025

Time : 5.47 PM.

Mrs. Snehal Varekar

Typed by Typist

Uploaded by

Ms. Tejal C. Rane

(Stenographer Grade-I)

NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Shri N. L. More (Court Room No.12)
Date of Pronouncement of Judgment/Order	15/09/2025
Judgment/Order signed by P.O. on	24/09/2025
Judgment/Order uploaded on	24/09/2025