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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 222 OF 2023

Hillary Clement D'souza @ Lawry and Hillary Clement D'souza (Since Deceased) Thr. Veronica Hillary Clement & Ors.	...Applicants
Versus	
Mrs. Ophelia Theofilo De'Abrue and Ors.	...Respondents

- Mr. G.S. Godbole, Senior Advocate i/by Ms. Pooja Thakkar, for the Applicants.
- Mr. Bernardo Reis i/b. Mr. Pavan S. Patil, for the Respondent No.1.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 19th AUGUST 2023**

P.C. :

1. I have passed the following order on 6th June 2023:-

“1. Heard Mr. Godbole, learned Senior Counsel appearing for the Applicant and Mr. Reis, learned Senior Counsel appearing for the Respondent No.1.

2. The factual position on record show that the original Plaintiffs, who have filed R.A.E. Suit No.1620/2366 of 2006 have by registered sale-deed dated 17th October 2003 sold the building in which the suit premises is situated to one Mr. Bhawanji Gala. It is the submission of Mr. Godbole, learned Senior Counsel appearing

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for the Applicant that therefore with effect from 17th October 2003, said Bhawanji Gala is the owner of the suit property and the Plaintiffs have no right, title and interest in the suit property. In spite of said position, the suit has been filed by the Plaintiffs contending that they are the landlords of the suit building. It is his submission that the Plaintiffs have come up with unclean hands and have played fraud on the Court.

3. Mr. Reis, learned Senior Counsel appearing for the Respondents seeks time to file affidavit-in-reply regarding the above aspect including whether other tenants are paying rent to the Plaintiffs or said Bhawanji Gala and related aspects.
4. Let such affidavit-in-reply be filed in two weeks.
5. The Applicant to file additional paper-book within one week from today.
6. Stand over to **23rd June 2023 at 2.30 pm.**”

2. In terms of said order, the Respondent No.1 has filed affidavit-in-reply dated 20th June 2023. The affidavit-in-reply and other documents on record show that the plaintiff nos.1 to 5 have entered into an agreement of sale dated 17th August 1979 to sell the property in favour of Mr. Bhawanji Gala and thereafter, the sale deed was executed on 17th October 2003.

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3. It is the contention of Mr. Godbole, learned Senior Counsel that this fact is not mentioned in the plaint and the same is also not disclosed in the evidence. It is his submission that during the pendency of the Appeal the applicants i.e. the defendants came to know about the same and therefore, filed application for additional evidence bringing on record the sale deed dated 17th October 2003. It is his submission that the suit has been filed on 27th September 2006 and therefore, the plaintiff nos.1 to 5 have no right, title and interest to file the suit. He further submits that this very crucial aspect is not disclosed in the plaint affecting the *bona fides* of the plaintiffs and therefore, the plaintiffs are not entitled for decree on the ground of *bona fide* requirement.

4. In view of the above submissions as arguable questions are raised, Rule.

5. Ad-interim relief in terms of prayer clause (b) till the pendency of the Writ Petition.

[MADHAV J. JAMDAR, J.]