

Sharayu.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 848 OF 2015
IN
SUIT NO. 3088 OF 2011

Shivani Pankaj Jhobalia & Anr.	...Applicants
<i>In the matter between</i>	
Shivani Pankaj Jhobalia & Anr.	...Plaintiffs
<i>Versus</i>	
Gautam Bhogilal Jhobalia & Ors.	...Defendants

Mr. K.R. Parekh, *for the Plaintiff.*
Mr. Sharan Jagtiani, *i/b M/s. Wadia Ghandy & Co., for the*
Defendant No. 1
Mr. A.R. Varma, *i/b M/s. Tejpal & Co., for the Defendants No. 3 to 6.*

CORAM: G.S. PATEL, J
DATED: 1st April 2015

PC:-

1. This is an Application for urgent ad-interim reliefs in a family dispute. The dispute is essentially between the Plaintiffs and Defendant No. 1. The Plaintiffs claim that there are two flats in question, one on the 1st floor and one on the 4th floor, and that the 1st Defendant is allotted the flat on the 4th floor. Mr. Jagtiani, learned Counsel for the 1st Defendant states on instructions that

the 4th floor is not usable since there is no occupation certificate for it and there has been no occupation certificate for several years.

2. In paragraph 3 of the Affidavit in Support of this Notice of Motion, an averment is made that the Defendants have “now” started to dump some of their personal belongings and materials in the hall of the 1st floor flat, and that they are doing so in a manner that makes impossible for the Plaintiffs to enter into or use the hall of this flat. Mr. Jagtiani points out that while it is true that 1st Defendant’s goods and belongings are indeed in the hall of the 1st floor flat, so too are belongings to the Plaintiffs themselves and that this state of affairs has continued over the last several years. Indeed, he points out that paragraph 15 of the Plaintiffs’ *prima facie* indicates that even according to the Plaintiffs this has been state of affairs since as far back as 2011.

3. It appears that both parties are in fact, propounding the same will and there should not be any contest in having that will proved. That, however, does not mean that the Plaintiffs are entitled to an ad-interim relief of a mandatory injunction at this stage given the forgoing circumstances. Ad-interim reliefs refused.

4. Affidavit in Reply to be filed and served on or before 24th April 2015. Affidavit in Rejoinder to be filed and served on or before 7th May 2015. List the Motion for hearing and final disposal on 17th June 2015.

(G. S. PATEL, J.)