

A

HANIF AZAMI ELIYAS AZAMI

v.

SHABANA MOHSIN GHAZI @ SHAIKH AND ANR.

AUGUST 1, 2006

B

[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Transfer of Property:

C

Property co-owned by Respondent No.1 and her husband, Respondent No.2—Appellant purchased it from Respondent No.2 who executed agreement for himself as well as for Respondent No.1 as her attorney—Suit filed by Appellant to restrain Respondents from disturbing possession—Trial Court granted ad-interim order of "status quo" in respect of the property—Appeal against—High Court set aside the order holding that there was collusion between Appellant and Respondent No.2—Directed appointment of Receiver and handing over possession of property to Respondent No.1—Challenge to—Held: Without giving any opinion on merits of the case, Supreme Court on considerations of equity, directed Trial Court to dispose of the suit at an early date.

D

E

The suit property was jointly owned by Respondent No.1 and her husband Respondent No.2. Respondent No.2 agreed to sell the property to Appellant and executed an agreement in that regard on behalf of himself and Respondent No.1 on the basis of her authorization, an unregistered power of attorney. Appellant paid Rs.11 Lakhs in cash to Respondent No.2 and took possession, but, subsequently apprehending threat, filed suit to restrain Respondents from disturbing his possession. An application for interim injunction was filed. Trial Court initially declined to grant any interim order but subsequently directed the Respondents to maintain *status quo* in respect of the flat after Respondent No.2 stated that he had no objection to the order of status quo being granted. On appeal by

F

G

Respondent No.1, High Court held that there was collusion between Appellant and Respondent No.2 and Respondent No.1 was intended to be deprived of the suit property. Accordingly it set aside the order of *status quo* passed by the Trial Court and directed appointment of the receiver and handing over possession of the suit flat to Respondent No.1.

H

In appeal to this Court, it was submitted that the Trial Court's order of *status quo* was justified when huge sums of money had been paid by the Appellant and the appointment of receiver directing delivery of possession to Respondent No.1 was clearly not warranted under the circumstances of the case, particularly when Respondent No.2 was owner of half-portion of the property.

Disposing of the appeal, the Court

HELD: 1.1. The High Court dealt with the factual aspects in great detail. It lost sight of the fact that Respondent No.2 was admittedly half-owner of the property. The observations by High Court were tentative and are not treated to be determinative factor in the suit which is stated to be pending. [225-F-G]

1.2. The High Court had directed the Trial Court to decide the proceedings in the suit pending before it within a particular time. Because of the interim order passed by this Court, there has been no progress in the suit before the Trial Court. Balancing equities it would be proper to direct the trial Court to dispose of the suit at an early date. The interim order passed by this Court shall be continued till disposal of the suit by the Trial Court. By granting protection it shall not be construed that this Court has expressed any opinion on the merits of the case.

[225-G-H; 226-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3221 of 2006.

From the Judgment and Order dated 20.7.2004 of the High Court of Bombay in Appeal from Order No. 539 of 2004.

Vijay Kumar, Bharti Tyagi, Siddharth Sangal and Vishwajit Singh for the Appellant.

Kavita Wadia, Manoj Vajpayee, D.K. Singh and Abhijit Sengupta for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

Challenge in this appeal is to the order passed by a learned Single Judge of the Bombay High Court setting aside the order of *status quo* passed

A by the trial Court and directing appointment of a receiver and handing over possession of the disputed property to respondent No.1.

Background facts in a nutshell are as follows:

B Appellant is the original plaintiff, respondent No.2 is original defendant No.1 and respondent No.1 is original defendant No.2. Original defendants are husband and wife. They purchased suit flat in their joint name in the year 1998 for a consideration of Rs.2 lakhs.

C The case of the appellant is that he entered into an agreement to purchase the suit flat on 19th March, 2004 from defendant No.1 who has executed the said agreement on behalf of himself and his wife, defendant No.2 on the basis of her authorization, i.e. by unregistered power of attorney alleged to have been executed by her in favour of her husband.

D The agreement to sale dated 19th March, 2004 between original plaintiff and defendant No.1 mentions that an amount of Rs.11,40,000/- was paid to defendant No.1 (respondent NO.2 herein) in cash and possession was delivered to the vendee/purchaser.

E Appellant-Plaintiff apprehending threat to his possession filed the suit (Regular Civil Suit No.268 of 2004) to restrain respondent No.1 and her husband from disturbing his possession. An application for interim injunction was filed for ad-interim relief.

F The trial Court initially vide its order dated 12th May, 2004 refused to grant ad-interim relief. However, it appears defendant No.1 (respondent No.2 herein) appeared before the trial Court and stated his no objection for grant of injunction in favour of the appellant. Trial Court vide order dated 14th May, 2004 directed defendants to maintain "*status quo*" in respect of the suit flat. An appeal was filed by the respondent No.1, before the High Court.

G The High Court took note of the factual scenario as presented by the parties. It took note of the fact that the so called Power of Attorney was an unregistered document. It was held that the order of *status quo* passed by the trial Court was really not warranted in the circumstances of the case.

H A few facts like payment of huge sum of money by cash were considered to be suspicious circumstances. It was also noted that initially the trial Court refused to pass any interim order but strangely the husband of respondent

No.1 who is supposed to have executed the agreement appeared in Court and stated that he has no objection to the order of *status quo* being granted. Similarly, it was held that non-mention of the payment in the Income tax returns was considered suspicious. It was, therefore, concluded that there appears to be some amount of collusion between the appellant and respondent No.1 and the matrimonial discord between respondent No.1 and respondent No.2 appears to have resulted in the collusive transaction.

In support of the appeal, learned counsel for the appellant submitted that the trial Court's order of *status quo* was justified when huge sums of money has been paid by the appellant and the appointment of a receiver directing delivery of possession to respondent No.1 is clearly not warranted under the circumstances of the case, particularly, when husband of respondent No.1, as has been even admitted by respondent No.1, is owner of half portion of the property. The question whether the transaction had been reflected in the Income Tax returns has no relevance so far as the present disputes are concerned.

Learned counsel for respondent No.1 on the other hand submitted that the factual scenario clearly indicates that there was collusion between appellant and respondent No.2. The marital discord between respondent No.1 and respondent No.2 has been over-emphasised and the appellant is nothing but a dummy of respondent No.2 i.e. husband of respondent No.1. The fact that the appellant claims to have paid money but had not indicated about the payment of huge sum of money in his income tax returns has been rightly considered by the High Court as a relevant factor. Similarly, the High Court held that there was no acceptable material regarding acknowledgment of the receipt of the amount in question.

We find that the High Court has dealt with the factual aspects in great detail. It has concluded that there was collusion between appellant and respondent No.2 and respondent No.1 was intended to be deprived of the suit property. The High Court had directed the trial Court to decide the proceedings in suit No. 268 of 2004 pending before it within a particular time. Because of the interim order passed by this Court on 16.8.2004, there has been no progress in the suit before the Trial Court. It needs no emphasis that the observations by the High Court were tentative and are not treated to be determinative factor in the suit which is stated to be pending. Balancing equities it would be proper to direct the trial Court to dispose of the suit at an early date and in any event not later than by the end of December, 2006.

- A The High Court has lost sight of the fact that respondent No.2 was admittedly half owner of the property. There is some amount of dispute as to who made investments for acquisition of the property in question. We need not go into that aspect presently. The interim order passed by this Court on 16.8.2004 shall be continued till disposal of the suit by the trial Court. By granting protection it shall not be construed as we have expressed any opinion on the merits of the case. The appeal is accordingly disposed of. No costs.
- B

B.B.B.

Appeal disposed of.