

CASE NO.:
Appeal (civil) 3221 of 2006

PETITIONER:
Hanif Azami Eliyas Azami

RESPONDENT:
Shabana Mohsin Ghazi @ Shaikh and Anr.

DATE OF JUDGMENT: 01/08/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No.15581 of 2004)

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 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:

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.

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.

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.

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.

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.

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.

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. question whether the transaction had been reflected in the Income Tax returns has no relevance so far as the present disputes are concerned.

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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. 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.

JUDIS