HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Miscellaneous Appeal No. 3870/2025

URN: CMA / 6571U / 2025

Smt. Niharika Singh D/o Late Shri Bhomandal Chouhan, Aged About 36 Years, R/o C/o Mansingh Chouhan, Retired Police Sub-Inspector, Near Purani Barf Factory, Prem Colony, Guna (M.p.) And Second Address, Bax 17, Raj Harsh Colony, Near Patel Aata Chaki, Kolar Road, Bhopal (M.p.).

----Appellant/Defendant

Versus

Shri Hitesh Rao S/o Shri Gokul Singh Rao, Aged About 42 Years, R/o House No. 640, Meera Bhawan, Narsinghpura Ward No. 27, Jonsganj, Ajmer, (Raj.) At Present R/o Gokul Meera, 10 Prajapati Nagar, Prithaviraj Nagar, Sanganer, Jaipur (Raj.).

----Respondent/plaintiff

For Appellant(s) : Mr. Budhi Prakash Sharma
For Respondent(s) :

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

03/07/2026

1. This Civil Miscellaneous Appeal under Order 43 Rule 1 (r) CPC has been filed by and on behalf of defendant, assailing the order dated 01.05.2025 passed by Additional District Judge No.11, Jaipur Metropolitan-I, Headquarter Sanganer, granting a temporary injunction in favour of respondent on his application for temporary injunction under Order 39 Rule 1 & 2 bearing No.206/2022, in following terms:

> "अतः प्रार्थी हितेष राव द्वारा प्रस्तुत प्रार्थनापत्र अंतर्गत आदेष 39 नियम 1 व 2 सीपीसी स्वीकार किया जाता है एवं अप्रार्थीया को पाबन्द किया जाता है कि वह मुल वाद के निस्तारण तक बिना विधिक प्रक्रिया अपनाये प्रार्थनापत्र में वर्णित वादग्रस्त सम्पत्ति (जिसका वर्णन प्रार्थनापत्र की मद संख्या 4 में दिया गया है) से प्रार्थी को बेदखल नहीं करे और अप्रार्थीया का काउण्टर टी0आई0 अस्वीकार कर खारिज किया जाता है।
>
> प्रार्थनापत्र फैसल शुमार होकर बाद तकमील संलग्न मूल पत्रावली हो।"

2. Heard counsel for appellant and perused the impugned order so also the other material available on record.

3. Factual matrix is not in dispute that appellant and respondent entered into marriage wayback on 02.05.2009 and during subsistence of their marriage, immovable property, a plot measuring 149.11 Sq. Yards in Prajapati Residential Scheme, Block-A, New Sanganer Road, Village Goliyawas, Tehsil Sanganer, District Jaipur, was purchased through registered sale deed dated 06.01.2011 in the name of appellant-wife. Both parties, after raising construction on the subject property started to live therein, however later on, due to accrual of matrimonial acrimony, their relationship has dissolved and a decree of divorce has been passed against respondent vide judgment dated 23.05.2019. After dissolution of marriage, husband filed a civil suit for permanent injunction along with application for temporary injunction, to restrain wife not to dispossess him from the suit property alleging *inter alia* that indeed the funds incurred to purchase the property was paid by husband and the property was purchased *benami* in name of his wife, in order to get exemption in payment of stamp duty. In counter to this suit, wife has filed a counter claim against husband to claim mesne profit so also to get possession of the suit property from husband. Learned trial Court, vide impugned order, has allowed the application for temporary injunction while dismissing the counter application for temporary injunction filed by appellant-wife, which is mentioned herein above, whereagainst instant appeal has been filed by appellant-wife.

4. Perusal of the impugned order *prima facie* reveals that the trial Court found a *prima facie* case in favour of respondent-

husband taking note of the money transactions, based on the entries in the bank passbooks of husband, his brother and father to wife, at the relevant point of time of purchasing the suit property so also by taking into consideration the undisputed and admitted possession of husband over the suit property. This Court on the face value, does not find any perversity in the impugned order.

5. In addition, this Court finds that provision of Section 2(9)(A)(iii) of the Prohibition of *Benami* Property Transactions Act, 1988, comes to rescue of respondent which stipulates as under:

> *"2(9)(A)(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual; "*

6. Recently, Hon'ble Supreme Court in case of **Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi and Ors.** reported in **[(2024) 11 SCC 351]** has held and observed that Appellate Court ought not to substitute its own view over and above to the view taken by the trial Court unless the injunction order of granting of refusal passed by trial Court suffers from any perversity, capriciousness, arbitrariness, malafides or having been passed in ignorance of the settled principles governing the grant of injunction under Order 39 of CPC.

7. In the case at hand, respondent-husband is admittedly in physical possession of the subject property and considering the factual matrix as referred hereinabove, this Court does not find that the trial Court has committed any perversity, manifest illegality or jurisdictional error or has acted beyond the provision

of Order 39 Rule 1 & 2 CPC, while restraining the appellant with the order of temporary injunction impugned herein.

8. As a result, the appeal is bereft of merits and same is hereby dismissed.

9. All pending application(s), if any, stand(s) disposed of.

(SUDESH BANSAL),J

RONAK JAIMAN/7