

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.945 OF 2015
IN
APPEAL FROM ORDER NO.780 OF 2015

Nisha Pradeep Garg	...	Applicant / Ori. Plaintiff
Vs.		
Ashima Pradeep Garg	...	Respondent

Mr. Shreepad Murthy, Adv. i/b. Abhishek Patil, Adv. for appellant.
Rohitashwa N Shetty, Adv. for respondent.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 10th September, 2015.

P.C. :

1. Rule. Returnable forthwith.
2. The Appeal from Order concerns a mother and daughter. The daughter is a resident of the USA with her husband. The daughter and the husband came to India in or about October, 2013. They lived in another flat in the same building as the mother. The mother has three properties. The mother is shown to have been executed Deed of Assignment cum conveyance as also gift deed in favour of the daughter in December / January, 2014. The documents are registered in January, 2014.
3. The daughter and son-in-law are stated to have the joined business with the father who is the husband of the mother. There were disputes. They could not carry on business. They have left India again for the USA in about July, 2014.

4. Just prior to July, 2014 there are shown to be two police complaints first filed by the daughter on 20th June, 2014 followed by a complaint the filed by the mother on 22nd June, 2014. The complaints are of an incident of assault. The assault is stated to be upon the knowledge of the father and the brother of the sister about the document executed solely in favour of the daughter.

5. The mother is thereafter shown to have executed a declaration that the initial documents are correct and further declaring that she also gives all her jeweleries only to the daughter.

6. Yet it is accepted on behalf of the daughter that the possession of all the suit properties has remained with the mother and that it is not with the daughter in case of all the the suit properties.

7. The transfers by the mother and the execution of the documents are now challenged by the mother. The brother and the sister are at dispute. The Court would have to see whether the original documents are executed under any coercion, influence or pressure or whether the later declaration in the suit is executed under the instigation of the son. All these require oral evidence. Pending the oral evidence no transfer can be effected.

8. The learned Judge in the impugned order has rejected the plaintiff's Notice of Motion and not granted relief of injunction on the ground that she is the owner of the suit property and has executed those documents but the case is of fraud and pressure cannot be accepted. Indeed the case cannot be accepted simplicitor because the case would be completely dependent upon the oral evidence. Hence

in such a case the property cannot be depleted pending the suit. The learned Judge has considered that there was nothing to show that the defendant would alienate the suit property or that she has tried to transfer the suit property and that because she was settled in the USA she could not transfer the suit property.

9. The aforesaid facts would show the execution of documents at the distance of six months and only during the period when the daughter was in India. It cannot be put to past the daughter to execute any document of which, she would be the owner pending the years that the suit would remain on board. Hence this is a fit case where the property must be protected pending the trial and the cross examination of both the parties.

10. Consequently the impugned order is seen to be incorrect and is set aside. There shall be an order of injunction restraining the defendant daughter from alienating, transferring or creating any third party rights or cannot open the documents in any manner whatsoever pending the suit.

11. Both Civil Application as also Appeal from Order are disposed of accordingly.

(ROSHAN DALVI, J.)

C E R T I F I C A T E

Certified to be true and correct copy of the original signed order.