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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.976 OF 2014
WITH
CIVIL APPLICATION NO.1189 OF 2014

WITH

APPEAL FROM ORDER NO.977 OF 2014
WITH
CIVIL APPLICATION NO.1190 OF 2014

Fazlur Rehman Habib Khan	...Appellant
V/s.	
Iqbal Hussain Habib Khan & Ors.	...Respondents

Mr.G.S. Hegde i/b Mr.U.V. Singh for the Appellant.
Mr.Jaiwant Chandnani for the Respondent No.3(e).
Mr.Sanjiv Sawant for the Respondent No.4.

CORAM : R.D. DHANUKA, J.
DATE : 9TH FEBRUARY, 2016.

P.C. :-

1. By these two appeals from order the appellant (original plaintiff) has impugned a common order passed by the learned trial Judge on 30th June, 2014, allowing Notice of Motion No.2370 of 2011 in terms of prayer clauses (a) and (b) and Notice of Motion No.540 of 2014 in terms of prayer clause (a) filed by respondent no.3(e). The suit flat which was the subject matter of these two appeals from order filed by the defendant no.3(e) is flat no.3.

2. In Notice of Motion No.540 of 2014, the defendant no.3(e) had applied for continuation of the Court Receiver of flat no.3, Gita Ashram Building, Shivaji Chowk, Daftary Road, Malad (East), Mumbai and to appoint the defendant no.3(e) to occupy the suit flat on the same terms and conditions as contained in the order dated 19th September and 20th September, 2011. In Notice of Motion No.2370 of 2011, defendant no.3(e) had prayed for an injunction against the plaintiff, his agents, servants and any other persons claiming through her in any manner whatsoever interfering or disturbing the possession of the defendant no.3(e) and her family members in respect of the suit flat and restraining the plaintiff from in any way entering upon the said flat.

3. Mr.Hegde, learned counsel for the appellant submits that the appellant has an exclusive right, title and interest in the said flat. The defendant no.3(e) had made a statement before the local police station that the defendant no.3(e) was in joint possession of the suit flat with the plaintiff. He submits that several articles of the plaintiff are lying the suit premises. He submits that the learned trial Judge has not considered the crucial aspect of the ownership of the suit flat claimed by the plaintiff and has appointed the Court Receiver in respect of the suit property and has permitted the defendant no.3(e) to occupy the suit flat. He submits that large number of documents

were produced by the plaintiff to demonstrate that the plaintiff was an exclusive owner of the suit property which are not dealt with by the learned trial Judge in the impugned order at all.

4. Learned counsel appearing for the defendant no.3(e) on the other hand invited my attention to the various orders passed by this Court. It is submitted that even in the suit filed by the plaintiff in respect of the said flat bearing flat no.3 in the year 1997, this Court has not granted any relief in favour of the plaintiff.

5. It is submitted that this Court had granted ad-interim relief thereby restraining the plaintiff from disturbing the possession of the defendant no.3(e). The plaintiff however, had locked the premises in gross defiance of the said ad-interim order passed by this Court. It is submitted that considering this conduct of the plaintiff, this Court appointed a Court Receiver in respect of the suit premises with a direction to permit the defendant no.3(e) to occupy the suit flat. My attention is also invited to the order passed by the Division Bench of this Court dismissing the appeal filed by the plaintiff against the said ad-interim order.

6. It is submitted that due to the obstructive attitude of the plaintiff, the defendant no.3(e) was required to take the assistance of police to implement the order passed by this Court. It is submitted that insofar as the alleged articles of the plaintiff lying in the suit

premises is concerned, this Court had while passing the order for appointment of the Court Receiver had granted a liberty to the plaintiff to remove the articles. The plaintiff has not removed his articles from the suit premises. He submits that the defendant no.3(e) is in established possession of the suit property and cannot be disturbed by the plaintiff. It is submitted that the suit is of the year 2003 and the learned trial Judge has already placed the matter on board for framing issues.

7. A perusal of the record indicates that this Court after considering the submissions of both the parties had granted ad-interim injunction against the plaintiff from disturbing the possession of the defendant no.3(e) and her family members in respect of flat no.3. The plaintiff however, took law in hand and put a lock in the suit premises. When this conduct of the plaintiff was brought to the notice of the Court, this Court appointed a Court Receiver in respect of the suit premises and permitted the defendant no.3(e) to occupy the suit premises and if necessary with the assistance of the police. This Court also noticed that the appellant had made an attempt to place his son in possession of the suit property.

8. The Division Bench of this Court has admittedly dismissed the appeal filed by the appellant against the order of the learned single Judge appointing the Court Receiver in respect of the suit

property.

9. Insofar as the submission of the learned counsel of the appellant (original plaintiff) that the appellant had produced large number of documents which are not considered by the learned trial Judge is concerned, a perusal of the record indicates that the learned trial Judge has considered the documents. At the stage of passing ad-interim relief, the Court has to take *prima-facie* view in the matter. The Court having found that the defendant no.3(e) is in possession of the suit property along with her family members, had rightly granted injunction initially. In view of the fact that the appellant had taken law in his hand and had locked the suit premises, in my view this Court has rightly appointed the Court Receiver in respect of the suit property and permitted the defendant no.3(e) to take possession of the suit flat with the assistance of the police.

10. Insofar as the submission of the learned counsel for the appellant that some of his articles are lying in the suit premises is concerned, the learned trial Judge while appointing the Court Receiver had already granted liberty to remove such articles. The appellant however, for the reasons best know to him, has not removed such articles.

11. Insofar as the submission of the learned counsel for the appellant that the learned trial Judge has not considered the aspect

of the ownership of the suit flat is concerned, the learned trial Judge has kept the issue pending for the purpose of determination at the final hearing of the suit. In my view, there is no infirmity with the order passed by the learned trial Judge. Both the appeals are totally devoid of merit and are accordingly dismissed.

12. The suit is of the year 2003. The parties have filed their written statement and the matter is placed on board for framing issues, I am thus not inclined to interfere with the order passed by the learned trial Judge in these two appeals.

13. At this stage, learned counsel for the appellant states that it is also the case of the appellant in the alternate that even if it is proceeded on the premise that the suit property was not self-acquired property of the plaintiff exclusively but was of the joint property, even in that event, the learned trial Judge could not have permitted the defendant no.3(e) to occupy the suit flat exclusively. In my view, the learned trial Judge has not passed any decree of possession at this stage. In view of the rival claims made by the parties and considering the conduct of the plaintiff, the learned trial Judge has appointed the Court Receiver with a direction to permit the defendant no.3(e) to occupy the suit flat. In my view, this order, on the contrary will protect the suit property and would not cause any prejudice to the parties to the suit.

14. Both the appeals from order are accordingly dismissed in aforesaid terms.

15. In view of the dismissal of the appeals from order, both the civil applications do not survive and are accordingly dismissed. No order as to costs.

16. The learned trial Judge shall make an endeavor to dispose of the suit within two years from the date of commencement of the oral evidence.

(R.D. DHANUKA, J.)