

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**O.O.C.J.**

APPEAL NO.423 OF 2015

IN

NOTICE OF MOTION NO.359 OF 2013

IN

SUIT NO.137 OF 2013

ALONGWITH

NOTICE OF MOTION NO.375 OF 2015

...

Mr.Hansraj Ramji Chheda

...Appellant

v/s.

Mr.Gangji Ramji Chheda & Ors.

...Respondents

...

Mr.Dineshkumar A.Dubey for the Appellant.

...

CORAM : A.S.OKA &**A.A. SAYED, JJ.****DATED : 19 JULY 2016****P.C.:**

Heard the learned Counsel appearing for the Appellant-the original first Defendant. The order under challenge is an interim order of temporary injunction, which is to operate till the disposal of the suit.

2. The Plaintiff and the Appellant-first Defendant are the brothers. According to the case of the Plaintiff, Flat No.204, situated at Anurag Building, 9, Banganga Cross Road, Wakeshwar, Mumbai was owned by their father and the father made a bequest in respect of the said flat under his last Will jointly to the Plaintiff and the first Defendant. The case of the

Plaintiff is that they purchased another flat in Vile Parle bearing Flat No.302, Lily Kunj, Plot No.420, Navin P.Thakkar Marg, Vile Parle, Mumbai. The case of the Plaintiff is that both the flats are jointly owned by the brothers and there was a family arrangement between them. According to the Plaintiff, the family arrangement was that both the brothers should own one flat and release the other flat. It is alleged that the Plaintiff released his share in the flat at Walkeshwar by a registered Release Deed, but the first Defendant has not released the share in the Vile Parle flat. Therefore, a substantive relief is claimed in the suit for a decree directing the first Defendant to execute the deed of release in respect of the flat at Vile Parle. In the alternative, there is a prayer for cancellation of Deed of Release dated 3 July 2006. By the impugned order, the learned single Judge granted temporary injunction restraining the Appellant-Defendant from disturbing the possession of the Plaintiff over the flat at Vile Parle. Learned single Judge granted the temporary injunction restraining the Appellant from creating any third party rights and from parting with possession of the flat at Walkeshwar.

3. The submission of the learned Counsel appearing for the Appellant is that the Appellant is the exclusive owner of the flat at Walkeshwar and therefore, there was no occasion to grant temporary injunction in respect of

the said flat. His submission is that the relief claimed is essentially in respect of the flat at Vile Parle and therefore, the order of injunction in respect of the flat at Walkeshwar is completely illegal.

4. We have considered the submissions. Learned single Judge in paragraph (9) of the impugned order has observed that the Plaintiff would claim that the consideration was paid out of the estate of the father, which came to be hands of the Plaintiff and the first Defendant in equal share. Learned Judge recorded a finding that the first Defendant-Appellant has not shown that consideration paid by him from his separate fund or property. After recording the said finding, the learned single Judge has protected the possession of the Plaintiff over Vile Parle flat and ensured that the flat at Walkeshwar is not transferred during the pendency of the suit.

5. We may note here that in the written statement filed by the first Defendant, the specific stand of the first Defendant is that the flat at Walkeshwar was not purchased by the father and in fact the flat was purchased by the first Defendant from his own funds. He has stated that out of respect, the Plaintiff being an elder brother, the flat was purchased in his name. There is a prima facie finding recorded by the learned single Judge that the first Defendant could not place on record any material to

show that the entire consideration in respect of the Walkeshwar flat is paid by him. The Plaintiff has made a prayer in the alternative for the cancellation of Deed of Release in respect of Walkeshwar flat.

6. In the circumstances, after finding that the Plaintiff has made out a prima facie case, the learned single Judge has passed a discretionary and equitable order of interim relief, which will operate only till the disposal of the suit.

7. As held by the Apex Court in the case of **Wander Ltd. And Anr. vs Antox India P. Ltd.**¹, this Appeal being an appeal against an interim order of discretionary nature, unless the discretion is shown to have been exercised arbitrarily or perversely, no interference can be made by the Appellate Court. We find nothing arbitrary or illegal about the exercise of jurisdiction. Hence, no case for interference is made.

8. The Appeal, accordingly, dismissed. Notice of Motion does not survive and the same is disposed of.

(A.A. SAYED, J.)

(A.S.OKA, J.)

¹ 1990 Supp (1) SCC 727