

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.136 OF 2016
ALONG WITH
CIVIL APPLICATION NO.184 OF 2016

Battur Habib Multani	 Appellant-Applicant
V/s.	
Zubeda Habib Multani	 Respondent

Mr. Himanshu Kode, I/by Mr. Maroof M. Khan, for the Appellant-Applicant.

Mr. Anil R. Mishra for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 28TH AUGUST, 2018.

P.C. :

1. Heard Mr. Kode, learned counsel for the Appellant-Applicant, and Mr. Mishra, learned counsel for the Respondent.

2. This Appeal takes an exception to the order dated 16th July 2015 passed by the City Civil Court at Dindoshi, (Borivali Division), Goregaon, Mumbai, thereby making the Notice of Motion No.526 of 2013 absolute in terms of prayer clauses (a) and (b).

3. The said Notice of Motion was filed by the Respondent herein in

S.C. Suit No.419 of 2013, restraining the Appellant from creating third party interest in the suit flat and also from entering into the suit flat during pendency of the Suit.

4. The suit flat is standing in the name of the Respondent. The Appellant is her son. The 'Agreement of Sale' dated 13th March 1982 and the 'Share Certificate' of the suit flat is in the name of the Respondent. She is paying the maintenance thereof. The Appellant, in his status as her son, was, admittedly, residing with her. However, due to his continuous torture and harassment, now the Respondent is finding it difficult to co-habit with the Appellant in the suit flat. Therefore, she has initially made complaints with the Police Authorities; however, as those complaints were not fruitful, she was constrained to file the Suit, along with the Notice of Motion, for interim injunction.

5. The submission of learned counsel for the Appellant is that, at the time of hearing of the Notice of Motion, the Appellant was not heard and, therefore, he may be given an opportunity to be heard in the matter. However, the order passed by the Trial Court goes to show that, despite the Trial Court fixing the matter for hearing of the Notice of Motion since long, the Suit being old one, the Appellant and his Advocate remained absent and, therefore, the Trial Court had no option, but to pass the order in the absence of the Appellant.

6. Even in this Appeal, the Appellant was given the opportunity to show whether he is having any document proving that the suit flat was purchased out of the income of the joint family, as contended by him in his reply to the Notice of Motion and in the written statement. However, no document is placed on record to that effect. 'Agreement of Sale' does not mention that it was purchased by the father of the Appellant from the income of the joint family in the name of the Respondent. Even the 'Shares Certificate' does not carry the name of any other member of the family, except the name of the Respondent. The only contention advanced is that, the Respondent is a 'Home-Maker' and, therefore, was not having any independent source of income. However, that aspect will be considered at the time of trial.

7. At this stage, one has to consider the prima facie case and that is the documents, which are produced on record, clearly disclosing that since the year 1982, the suit flat is standing in the name of the Respondent, as it was purchased in her name. The 'Shares Certificate' also stands in her name. She is paying maintenance of the Society also. Hence, as per the settled position of law, the Appellant cannot impose himself, though he may be a son, on the Respondent; especially when the Respondent is already constrained to file various complaints against the Appellant to the Police Authorities, dated 7th May 2011, 23rd December

2011, 13th February 2012, 10th April 2012, 3rd June 2012, 14th June 2012, 24th August 2012 and 10th December 2012 and especially when the Suit filed by the Appellant, restraining the Respondent from dispossessing him without following the due process of the law, is already disposed off as dismissed.

8. In view thereof, there remains hardly any substance in the contention raised by the Appellant. The Trial Court has, therefore, rightly allowed the Notice of Motion and restrained the Appellant from entering into the suit flat or creating third party interests therein.

9. The Appeal, therefore, being devoid of merits, stands dismissed.

10. At this stage, learned counsel for the Appellant seeks protection of two weeks. However, considering that during the pendency of the Appeal since the year 2016, there was no such interim protection granted, it cannot be extended or granted, when the Appeal itself is dismissed.

11. In view of dismissal of the Appeal, Civil Application No.184 of 2016 does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]