

\$~9.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **MAT.APP.(F.C.) 30/2020 and CM APPL. 169-70/2020**

DEVENDER NAHAR Appellant
Through: Ms. Jainika Mohan, Advocate with
appellant in person.

versus

PAYAL MAHESHWARI Respondent
Through: Mr. D.K. Malhotra, Ms. Purnima
Maheshwari and Mr. Rajesh Malhotra, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **03.02.2020**

1. The appellant is aggrieved by an order dated 24.09.2019, passed by the learned Family Court, dismissing an application moved by him under Order XXXIX Rule 1 and 2 CPC praying *inter alia* for grant of an interim injunction against the respondent/wife restraining her from selling, transferring, alienating or parting with possession of the ground floor of premises No.A-353, Defence Colony, New Delhi.

2. A perusal of the impugned order reveals that the appellant/plaintiff has filed a suit for the relief of declaration, for declaring the Relinquishment Deed dated 08.01.2008, executed by him in favour of the respondent, relinquishing his 50% undivided share in the captioned premises as null and

void and for passing a decree of specific performance claiming that an oral agreement had taken place between him and the respondent herein, that she shall execute a Sale Deed of her 50% undivided share in the captioned premises in his favour on receiving the balance payment. Lastly, the appellant/plaintiff has sought a restraint order against the respondent, restraining her from selling/creating any third party interest in the suit premises. It is not in dispute that the suit premises is presently under the occupation of the respondent, the two minor children of the parties, who are in her care and custody and the maternal grandparents.

3. Noting the fact that the Relinquishment Deed was executed by the appellant/plaintiff in favour of the respondent/wife in respect of his 50% undivided share in the suit premises in the year 2005 and based whereon the entire premises stands mutated in the name of the respondent, the Family Court has opined that the appellant/plaintiff is not entitled to seek an *ad interim* injunction, even in equity.

4. Learned counsel for the appellant/plaintiff states at the outset that the Relinquishment Deed in respect of 50% undivided share in the suit premises was not executed in the year 2005, but was executed on 08.01.2008, which fact is confirmed by learned counsel for the respondent. It is also not in dispute that the subject property stands mutated in the name of the respondent/defendant in the records of the municipal authority. It is also admitted by learned counsel for the appellant that the purported oral agreement between the parties that the respondent/wife will execute a Sale

Deed in respect of her 50% undivided share in the suit premises in favour of the appellant, was arrived at sometime in the year 2005.

5. In the aforesaid scenario, the learned Family Court cannot be faulted in observing that the relief of declaration as also the relief of specific performance in respect of the alleged oral agreement arrived at between the parties has been sought after a period of 14 years from the date of executing the Relinquishment Deed. Even if we exclude a period of 3 years, due to an error in recording the date of execution of the Relinquishment Deed as 2005, instead of 08.01.2008, the delay is of 11 years. It is also pertinent to note that the respondent has taken a preliminary objection in the written statement on the aspect of limitation and issues have yet to be framed in the suit.

6. Learned counsel for the respondent/defendant states that his client and the children are presently residing in the suit premises alongwith her parents. He explains that the respondent is working as a Director in a company based in Singapore and due to the flexitime option given by the employer/company, she is in a position to work from home in India and travel to Singapore for meetings, as and when required.

7. Having perused the impugned order and on hearing the submissions made by learned counsel for the parties, we find no reason to interfere. The present appeal is therefore dismissed in *limine* as meritless alongwith the pending application.

8. Before parting with the case, we may record that we had interacted with both sides at some length to explore the possibility of the parties

amicably settling their disputes, particularly since the appellant and the sister of the respondent were present. However, at one stage, the appellant declined to take the talks of settlement further and therefore, the appeal has been decided on merits.

HIMA KOHLI, J

ASHA MENON, J

FEBRUARY 03, 2020

rkb/ap