



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.13140 OF 2024
IN
FIRST APPEAL NO.1244 OF 2024

Ashok Vadher

... Applicant.

Versus

Jayshree Suresh Pandya

... Respondent.

Ms. Shaila Pandey for the Appellant.

Ms. Hima Khuman a/w Ms.Vidhi Doshi for Respondent No.1.

Coram : Sharmila U. Deshmukh, J.

Date : January 07, 2025

P. C. :

- 1. Rule.** Rule on prayer clause "a", returnable after a period of six weeks.
- 2.** Interim Application has been preferred seeking stay of the execution of the Judgment and Decree dated 19th March, 2024.
- 3.** SC Suit No.2051 of 2013 was filed by the Respondent No.1 seeking declaration as to ownership of title, partition and injunction which came to be decreed declaring the Plaintiff to be the joint owner of the flat and entitled to half share therein and for partition of the suit flat by metes and bounds by appointing a Court Commissioner.
- 4.** The case of the Plaintiff was that the suit flat was jointly purchased by the Plaintiff and the Respondent No.1 and in support

of her claim, the registered agreement for sale and evidence showing payment of 50% of the purchase amount was produced on record. Based on these documents, the Trial Court accepted the case of the Plaintiff of joint ownership and directed the partition of the suit flat.

5. It is an admitted position that the SC No.2052 of 2018 has been filed by the Appellant herein for declaration that the Conveyance-Deed in respect of the suit flat which is executed in the joint names is null and void as according to him, the allotment letter was issued in his sole name and that the amount of Rs.5 lakhs which was paid by the Respondent No.1 had been refunded to her. It was further his case that there has been misuse of power of attorney executed for execution of the sale-deed, which has been revoked.

6. Learned counsel appearing for the Applicant has taken this Court through the judgment of the Trial Court and would submit that as the counter claim is pending and if the suit flat is partitioned, the entire proceedings will be rendered infructuous. Learned counsel appearing for the Respondent No.1 would submit that 50% of the consideration was paid from her account and the share certificate showed the joint names of the Appellant as well as the Respondent No.1 and that all outgoings in respect of the said flat had been paid by her.

7. I have considered the submissions.

8. From the registered agreement of sale dated 2nd November, 2002, it appears that the agreement of sale has been executed in the joint names of the Plaintiff and the Respondent No.1. However, the said document is under challenge in Suit No.2052 of 2018, which is pending adjudication before the Trial Court. Ideally, as the counter-claim was filed, both the suits ought to have been decided together, so that the dispute could have been adjudicated effectively. The suit premises is stated to be about 400 sqr.feet. and it is not shown that the partition by metes and bounds would enure to the benefit of either of the parties as admittedly the suit premises a flat in a constructed building with a common entrance.

9. Considering the fact that the Appeal has already been admitted by an order of even date, the partition of the suit flat which is directed by Clause 3 of the operative part of the order is stayed. In addition, both parties are directed not to create any third party rights in respect of the suit flat without leave of this Court.

10. Interim Application is allowed in the above terms.

[Sharmila U. Deshmukh, J.]