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(2008) 106 DRJ 461

Delhi High Court

Case No: C.M. (M) 485 of 2008

Akshod Kumar Sharma — APPELLANT

Vs

Tanu Sharma — RESPONDENT

Date of Decision: Sept. 23, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2
- Penal Code, 1860 (IPC) - Section 323, 406, 498A, 506

Citation: (2008) 106 DRJ 461

Hon'ble Judges: S.N. Dhingra, J

Bench: Single Bench

Advocate: F.K. Jha, for the Appellant; Rama Parveen Siddiqui, for the Respondent

Final Decision: Dismissed

Judgement

Shiv Narayan Dhingra, J.
By the petition, petitioner has assailed an order dated 12th March, 2008 passed by First Appellate Court whereby an appeal of the petitioner against an order of learned Civil Judge dated 22.8.2007 dismissing his application under Order 39 Rule 1 and 2 CPC for interim injunction, was dismissed.

2. The brief facts relevant for purpose of deciding this petition are that the petitioner, who is husband, filed a suit against his wife for declaration of permanent and mandatory injunction in respect of house No. E-5/22, Sector 16, Rohini claiming that the property constructed over 60 square meters of plot was purchased by him benami in the name of his wife and daughter and for their benefit and welfare. He has spent a huge amount on its construction. He was dealing in shares and sale-purchase of properties. He used to get money from his foreign based brother, mother and sister. He was living in the property along with his wife and daughter. However, after a dispute between the parties he was falsely implicated in an FIR No. 692/2006 u/s 323/406/498-A/506 IPC and was arrested. After he was bailed out, his waft did not allow him to enter the house and locked the main

gate. He wanted a declaration that this property belonged to him and he wanted a permanent injunction that his ingress and egress should not be obstructed by the defendant (wife).

3. In response to the suit and application under Order 39 Rule 1 & 2 CPC, wife stated that property was purchased by her through her own resources. She was in service with Indian Airlines since 4th October, 1990. Construction over the property was also got done out of her own resources. The plaintiff for most of the times was jobless and had no income. She annexed photo copies of her year-wise, salary along with form 16 of Income Tax Return and placed on record documents issued by the concerned authorities detailing various loans she had taken during course of time and stated that she had invested the loan amount in getting the suit property constructed.

4. Both the Courts below after considering the facts placed before them came to conclusion that there was no prima facie case in favour of the plaintiff and no injunction could be issued.

5. The petitioner relied on Nand Kishore Mehra Vs. Sushil Mehra, wherein Supreme Court observed as under:

6. Sub-section (1) of Section 3, as seen, prohibits a person from entering into any benami transaction. Sub-section (3) of the Section 3, as seen, makes a person who enters into a benami transaction liable for punishment. Section 5 makes properties held benami liable for acquisition without payment of any amount. But, when Sub-section (2) of Section 3 permits a person to enter into a benami transaction of purchase of property in the name of his wife or unmarried daughter by declaring that the prohibition contained against a person in entering into a benami transaction in Sub-section (1) of Section 3, does not apply to him, question of punishing the person concerned in the transaction under Sub-section (3) thereof or the question of acquiring the property concerned in the transaction u/s 5, can never arise, as otherwise the exemption granted u/s 3(2) would become redundant. What we have said of the person and the property concerned in Sub-section (2) of Section 3 in relation to non-applicability of Section 3(3) and Section 5 shall equally hold good for non-applicability of the provisions of Sub-section (1) and (2) of Section 4 in the matter of filing of the suit or taking up the defence for the self same reason. Further, we find it difficult to hold that a person permitted to purchase a property in the name of his wife or unmarried daughter under Sub-section (2) of Section 3 notwithstanding the prohibition to enter into a benami transaction contained in Sub-section (1) of Section 3 cannot enforce his rights arising therefrom, for to hold so would amount to holding that the Statute which allows creation of rights by a benami transaction also prohibits the enforcement of such rights, a contradiction which can never be attributed to a Statute. If that be so, there can be no valid reason to deny to a person, enforcement of his rights validly acquired even in the past by purchase of property in the name of his wife or unmarried daughter, by making applicable the prohibition contained in respect of filing of suits or taking up of defences imposed in respect of benami

transactions in general by Sub-sections (1) and (2) of Section 4 of the Act. But, it has to be made clear that when a suit is filed or defence is taken in respect of such benami transaction involving purchase of property by any person in the name of his wife or unmarried daughter, he cannot succeed in such suit on defence unless he proves that the property although purchased in the name of his wife or unmarried daughter, the same had not been purchased for the benefit of either the wife or the unmarried daughter, as the case may be, because of the statutory presumption contained in Sub-section (2) of Section 3 that unless a contrary is proved that the purchase of property by the person in the name of his wife or his unmarried daughter, as the case may be, was for her benefit.

6. In view of the judgment of the Supreme Court, the petitioner is not entitled to claim the interim relief, without first showing that funds were given by him and it was purchased benami in the name of his wife and daughter for his own benefit. Even otherwise, the material placed on record by the wife abundantly shows that the petitioner had no prima facie case. The two Courts below rightly came to conclusion that no case was made for grant of interim injunction in favour of the petitioner. I find no force in the petition. The petition is hereby dismissed.