

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 64 OF 2009.
ALONG WITH
CIVIL APPLICATION NO.83 OF 2009.

Smt.Usha Sudhakar Geet	: Appellant.
Versus	
Shri Vivek Sudhakar Geet & ors.	: Respondents.

Shri. Rahul S Kate for the Appellant.

CORAM : R.M.SAVANT, J.
DATED : JANUARY 30,

2009

P.C.

1. This Appeal takes exception to the order dated 10.09.2008 passed by the learned 2nd Joint Civil Judge, Senior Division, Pune by which order the Application below Exhibit-5 for temporary injunction filed by the Appellant/Plaintiff came to be rejected.

2. The Appellant, who is the original Plaintiff, has filed Special Civil Suit NO.477 of 2006 for partition and separate possession of her 1/4th in the suit property which is a flat standing in the name of the Defendant No.1 who is the son of the Plaintiff.

3. In the said suit, the Plaintiff has filed an application numbered as Exhibit 5 for temporary injunction restraining the Defendant No.4, which a co-operative Bank, from creating any third party interest or from selling the suit property.

4. It is the case of the Appellant/Plaintiff that her husband i.e. the father of the Defendant No.1, had contributed towards purchase of the said flat and, therefore, on the death of her husband, she has a share in the said flat. It is the case of the Plaintiff that the suit property is a joint family property of the Plaintiff and the Defendant No.3. It is further the case of the Plaintiff that the Defendant No.1 had mortgaged the suit property with the Defendant No.4 and the amount availed of from the Defendant No.4 has been spent by the Defendant No.1 on his vices.

5. The Defendant No.4 resisted the said Application and inter alia stated in its reply that the Defendant No.1 has availed of the loan facility of Rs.Ten lakhs. It is also the case of the Defendant No.4 that the transaction, as alleged by the Plaintiff, is hit by the provisions of Prevention of Benami Transactions Act.

6. The trial Court, whilst considering the said Application under Exhibit 5, recorded a finding that the said property could not be said to be a joint family property as no evidence was produced by the plaintiff to show that the said property was purchased from the joint family nucleus. The trial Court was of the view that if according to the Plaintiff the property was purchased from the income of her husband, but since it was purchased in the name of the Defendant No.1, the transaction would be hit by the provisions of Prevention of Benami Transactions Act and that it would have to be presumed that the property was for the benefit of the Defendant No.1. The trial Court also recorded a finding that since the Plaintiff has not produced any evidence showing the income of her husband and evidence as to

whether after catering to the needs of the joint family there was any surplus amount from which the suit property could be purchased, it would have to be presumed that the said property is the property of the Defendant No.1. The trial Court also came to a conclusion that a collusion between the Plaintiff and the Defendant No.1 to dupe the Defendant No.4 Bank could not be ruled out. The trial Court was therefore of the view that the no prima facie case has been made out by the Plaintiff and that the balance of convenience was in favour of the Defendant No.4 which had lent an amount of Rs.Ten lakhs to the Defendant No.1. The trial Court therefore rejected the said Application under Exhibit 5.

7. Having perused the impugned order dated 10.09.2008 passed by the trial Court and having considered the reasons mentioned therein, in my view, no case for interdiction at the hands of this Court is made out. The above Appeal from order is accordingly dismissed.

8. In view of the dismissal of the above Appeal from Order, the

Civil Application No.83 of 2009 does not survive and the same is accordingly disposed of.

[R.M.SAVANT, J]