

A RAVI PRAKASH AGARWAL & ORS.

v.

RAJESH PRASAD AGARWAL & ORS.

(Civil Appeal No. 1668 of 2008)

B FEBRUARY 29, 2008

(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

*Code of Civil Procedure, 1908; O.41 R.41(r):*

C *Appeal under, against order of Division Bench of High Court directing to maintain status quo in respect of property in dispute – Application – Order, recalled and order granting interim injunction vacated by the High Court – On appeal, Held: Order of the Division Bench of the High Court granting maintenance of status quo continued for considerable period of time – Under the circumstances, it would be appropriate to continue the said order of the High Court – Trial Court directed to dispose of the suit at the earliest – Directions issued.*

D **Appellants filed a suit and an application for injunction for declaring the sale deed executed by respondent No.1 in favour of respondent No.3 as void and for issuance of permanent injunction against them restraining them from dispossessing and also from selling, letting and disposing of the property. The trial Court granted the injunction against the respondents. The order was affirmed by the Division Bench of the High Court directing the parties to maintain status quo of the property in question. Subsequently, on the application filed by respondent No.4, the order was recalled and the appeal was dismissed by the High Court. Hence the present appeal.**

E **Appellant contended that the order of the High Court granting status quo continued for nine years and by the impugned order the position has been changed.**

**Disposing of the appeal, the Court**

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**HELD: 1.1** The order of status quo continued for considerable length of time. It would, therefore, be appropriate to direct maintenance of status quo as was originally granted by the High Court vide its order dated 24.11.2001. (Para – 7) [644-G, 645-A]

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**1.2** It is clarified that by giving this protection it shall not be construed as if this Court has expressed any opinion on the merits of the case. The Trial Court to dispose of the suit as early as practicable. (Para – 7) [645-A]

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CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1668 of 2008.

From the final Judgment and Order dated 13/7/2006 of the High Court of Judicature at Allahabad in F.A.F.O. No. 1741/2001.

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Rakesh Dwivedi, Ritesh Agarwal, M.Z. Chaudhary and Anis Ahmed Khan for the Appellants.

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Dinesh Dwivedi, Shrish Kumar Misra and Ajay Kr. Singh for the Respondents.

The Judgment of the Court was delivered by

**Dr. ARIJIT PASAYAT, J.** 1. Leave granted.

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2. Challenge in this appeal is to the order of a Division Bench of the Allahabad High Court in First Appeal under Order 41 Rule 1 (r) of the Code of Civil Procedure, 1908 (in short 'CPC')

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3. Backgrounds facts in a nutshell are as follows:

The appellants as plaintiffs filed a suit (suit No.445 of 1999) for three reliefs:

(i) The sale deed executed by defendant-respondent

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A no.1 on 22.2.1999 in favour of defendant-respondent no.3 be declared as void.

(ii) a permanent injunction be issued restraining the defendants from dispossessing the plaintiffs from the property in dispute.

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(iii) Another permanent injunction restraining the defendants no.1, 2 and 4 from letting, selling and disposing of the property.

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4. An application for injunction was also filed. On 4.5.1999 ex-parte order of injunction was granted. The prayer to modify the same was rejected. On 24.11.2001 a consent order was passed by the Division Bench of the High Court. The Division Bench directed disposal of the suit within six months and further directed maintenance of status quo of the suit property till its disposal on certain conditions. Subsequently, application was filed by respondent no.4 by making a grievance that her counsel was not heard. It is the stand of the appellants that her defence was struck off. In any event the order was recalled on 9.1.2002.

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High Court dismissed the appeal holding prayer for interim injunction.

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5. It is stated by learned counsel for the appellants that the order of status quo continued for nine years and by the impugned order the position has been changed. The conditions stipulated are really of no consequential relevance, as in that case during pendency of the case there may be a necessity for impleading the vendees.

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6. Learned counsel for the respondents on the other hand, submitted that the order is really one of concurrence and, therefore, there was no need to repeat the reasoning.

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7. We find that the order of status quo continued for considerable length of time. It would, therefore, be appropriate to direct maintenance of status quo as was originally granted

by order dated 24.11.2001. We make it clear that by giving this protection it shall not be construed as if we have expressed any opinion on the merits of the case. We request the Trial Court to dispose of the suit as early as practicable preferably by the end of 2008. A

8. The appeal is accordingly disposed with no order as to costs. B

S.K.S.

Appeal disposed of.