

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Rashida Asad

High Court Appeal No.275 of 2021

Saba RarhatAppellant

Versus

Farhat Rashid & others.....Respondents

Appellant: *Through Mr. Haider Waheed,*
advocate.

Date of Hearing: *06.12.2021*

Date of Short Order : *06.12.2021*

O R D E R

1. Through instant High Court Appeal, the appellant [wife of respondent No.1] has impugned the order dated 01.11.2021 passed by the learned Single Judge in Suit No.156 of 2020, however, only to the extent of directions issued by the learned Single Judge not to create third party interest in respect of the subject property, has been challenged. According to learned counsel for the appellant, the subject property was admittedly gifted by the respondent No.1 [husband of the appellant] to the appellant, whereas, on account of strain relations, the respondent No.1 has filed the frivolous suit seeking cancellation of such gift and claimed such property as Benami. According to learned counsel for the appellant, the restraining order has been passed by the learned Single Judge under a mistaken notion that doctrine of lis pendens is attracted in the instant case, whereas, according to learned

counsel, there is no case or proceedings pending in respect of the subject property. It has been prayed that the impugned order to the aforesaid effect may be set-aside.

2. We have heard the learned counsel for the appellant at some length, and perused the impugned order passed by the learned Single Judge in Suit No. 156/2020 filed by the respondent No.1 against the appellant seeking Declaration, Revocation of Gift Deed & Permanent Injunction in respect of the same subject property, wherein, besides seeking declaration and cancellation of the oral gift in respect of subject property, further declaration has been sought to the effect that the respondent No.1 is the real owner of subject property for himself and for his brother [respondent No.4], who has been impleaded as respondent No.4 in the aforesaid suit, whereas, the appellant is the ostensible benami owner of subject property i.e. Bungalow No.19 (ground + 1), measuring 2000 square yards, situated at Khayaban-e-Shahbaz, Phase VI, DHA, Karachi.

3. From perusal of the impugned order passed by the learned Single Judge, it appears that the learned Single Judge, after having taking stock of material facts, relationship between the parties and the nature of respective claim of the parties in the subject suit, has been pleased to pass an interim order only to the extent not to create any third party interest in respect of the subject property, whose ownership has been disputed in the suit, while exercising the discretion as vested in Court to grant interim relief and/or to pass appropriate restraining order in the interest of justice, prima facie, does not suffer from any illegality or jurisdictional defect, therefore, does not require any interference of this Court in the instant High Court Appeal. Moreover, the above order is not a final

order, and the same otherwise would not affect the merits of the case, which can be decided on the basis of material and/or the evidence as may be produced by the parties in accordance with law.

4. It has been observed that tendency to challenge the interlocutory orders passed during course of proceedings, wherein, no final determination of dispute between the parties is made, nor such orders somehow adversely affect either merits of the case nor finally determine the rights or claims of the parties in the suit, has increased recently, which not only results in piling up of unnecessary litigation in Court on one hand, but also causes delay in disposal of the cases on merits on the other.

5. Accordingly, without diluting upon the scope and applicability of the doctrine of lis pendens, we hold that impugned order does not suffer from any factual error or illegality, therefore, does not require any interference by this Court. Accordingly, instant High Court Appeal was dismissed in limine vide our short order dated 06.12.2021 alongwith listed applications, and above are the reasons of such short order.

6. It is, however, clarified that the impugned order and disposal of instant High Court Appeal in the above terms, may not adversely affect the merits of the case, whereas, rights or claim of the parties in the suit, shall be decided after recording evidence of the parties, in accordance with law.

JUDGE

JUDGE

A.S.