

SLP(C)No. 9039 OF 2003

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2017 OF 2004

(Arising out of SLP(C) 22946/2003)

AMAR SUSHIL KAPOOR & ANR.

.....APPELLANT (S)

VERSUS

SITA RANI KAPOOR & ORS.

.....RESPONDENT (S)

O R D E R

Leave granted.

This appeal is directed against the order dated 18th February, 2003 passed by Division Bench of the High court whereby disposing of FAO 328/2002, the High Court has set aside a part of the order of learned Single Judge and permitted the appellant before High Court (respondent No.1 herein) to let out a portion of property to tenant with an understanding that by doing so, she will not create third party interest nor any right in favour of the tenant. It is necessary to notice in brief the facts.

A suit for partition was filed against the respondent No.1 and others, by the appellants. In the said suit, ad-interim injunction was granted by the High court on 5th August, 1999 by which the parties were directed to maintain

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status quo in respect of the title and possession of the suit property. The order dated 5th August, 1999 was made absolute by the learned Single Judge of the High Court in terms of the decision dated 21st August, 2002. By that order, while making the order dated 5th August, 1999 absolute, the parties were further restrained from creating third party interest in the property including letting out any portion of the suit property without prior permission of the court during the pendency of the proceedings. The prayer of the plaintiffs for appointment of Receiver was, however, rejected. Against the order dated 21st August, 2002, one of the defendant, namely, Pawan Kumar Kapoor, filed an appeal before the Division Bench of the High Court being FAO (OS) No.325 of 2002. Pawan Kumar Kapoor is the son of the present respondent No.1. In this appeal, he is respondent No.2. The plaintiffs, in the suit, are the appellants. The appeal filed by Pawan Kumar Kapoor was dismissed by the Division Bench by order dated 11th October, 2002. The Bench passed the following order :

"Heard.

No ground is made out to interfere with the impugned order which has been passed by learned Single Judge taking into consideration the established principles of law.

Dismissed."

When the present appeal (FAO 328/2002) was taken up

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for hearing, the afore-quoted order was brought to the notice of the Bench hearing the appeal. In the impugned order though it has been noticed that there is no infirmity in the order of learned Single Judge but without stating any reason whatsoever the said order has been modified and the first respondent granted permission to let out the portion of the property as aforesaid. It is surprising that the impugned order does not even refer to the order dated 11th October, 2002 passed by a Co-ordinate Bench dismissing the appeal against the same order of Single Judge, namely, the one referred to above passed on 21st August, 2002. Today, we have dismissed

sed SLP(C) 9309/2003 that was filed by Pawan Kumar Kapoor challenging the order of the learned Division Bench dated 11th October, 2002. We have perused the order of Single Judge. We find no infirmity therein. The Division Bench was clearly in error in setting aside a part of the order of the Single Judge without even noticing the order dated 11.10.2002. In this view, we set aside the impugned judgment dated 18th February, 2003 passed in FAO (OS) 328/2002. The said first appeal is dismissed and the order of the Single Judge is maintained. The appeal is allowed accordingly.

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The appellants would be entitled to costs as well.

.....J.

K. SABHARWAL )

( Y.

.....J.

N. AGRAWAL )

( B.

NEW DELHI;  
APRIL 2, 2004

ITEM No.36

Court No. 6

SECTION XIV  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.9039/2003

(From the judgement and order dated 11/10/2002 in FAO 325/02  
of The HIGH COURT OF DELHI AT N. DELHI)

PAWAN KUMAR KAPOOR

Petitioner (s)

VERSUS

AMAR SUSHIL KAPOOR & ORS.

Respondent (s)

( With Appln(s). for c/delay in filing SLP )  
( With prayer for interim relief )  
With

SLP(C)No.22946/2003 (With appln.(s) for c/delay in filing/refiling SLP and with prayer for interim relief )

Date : 02/04/2004 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL  
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Petitioner (s)

In SLP(C) 22946/03 Mr. Rajesh Tyagi, Adv.  
& for Respondent in Dr. Aparana Bhardwaj, Adv.  
SLP(C) 9039/2003 for Mr. Praveen Jain, Adv.

Mr. A.S. Pundir, Adv.

For Respondent (s)

Mr. Tripurari Roy, Adv.  
Mr. Vishwajit Singh, Adv.  
Mr. Ravi Kumar Verma, Adv.  
Mr. Ritesh Agrawal, Adv.

Mr. Krishnanand Pandeya, Adv.

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UPON hearing counsel the Court made the following  
O R D E R

SLP(C) 9039/2003

There is no ground to interfere with the impugned order. The SLP is dismissed.

C.A. No. 2017/2004 (Arising out of SLP(C) 22946/2003)

Delay condoned.

Leave granted.

The appeal is allowed in terms of the signed order. The appellants would be entitled to costs as well.

(Satish K. Yadav)  
Court Master

(V.P. Tyagi)  
Court Master

[ Singed order in C.A.No. 2017/2004 (Arising out of SLP(C) 22946/2003) is placed on the file ]

